BOSTON PUBLIC LIBRARY
3 9999 06316 205 9

№9331-0744a3
51-61
1907-08

GIVEN BY
Mass. Bureau of Statistics of Labor

VOL. XIII, No. 4 WHOLE No. 59

Commonwealth of Massachusetts

LABOR BULLETIN

ISSUED BY THE
BUREAU OF STATISTICS OF LABOR

JUNE 9 1908

EDITED BY
CHARLES F. GETTEMY
CHIEF OF BUREAU

MAY, 1908

CONTENTS:

BOSTON
WRIGHT & POTTER PRINTING COMPANY
STATE PRINTERS
1908

MASSACHUSETTS
Bureau of Statistics of Labor

Rooms 250–258, State House, Boston

MANUFACTURES DIVISION. — Engaged in the Preparation of the Annual Statistics of Manufactures.

MUNICIPAL STATISTICS DIVISION. — Engaged in the Preparation of the Annual Comparative Financial Statistics of Cities and Towns.

BULLETIN DIVISION. — Engaged in the Preparation of the Labor Bulletin, and Annual Reports on Strikes and Lockouts, Changes in Rates of Wages and Hours of Labor, Trade Unions, etc.

CENSUS DIVISION. — Engaged on the Decennial Census and Special Investigations.

FREE EMPLOYMENT OFFICES DIVISION.

Boston Free Employment Office, 8 Kneeland Street.

Springfield Free Employment Office, 37 Bridge Street.

Fall River Free Employment Office, Bradford-Durfee Textile School.

MASSACHUSETTS LABOR BULLETIN.

ISSUED MONTHLY IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 107, REVISED LAWS, BY THE BUREAU OF STATISTICS OF LABOR, BOSTON.

Editor: CHARLES F. GETTEMY, *Chief of Bureau.*
Associate Editors: FRANK H. DROWN, ROSWELL F. PHELPS, FRANK S. DROWN.

VOL. XIII, No. 4. May, 1908. WHOLE No. 59.

THE STATE OF EMPLOYMENT IN THE ORGANIZED INDUSTRIES, APRIL 1, 1908.

This article presents the results of the Bureau's first attempt at procuring statistics relating to the state of employment among the organized trades. The results of the canvass have not been all that could be desired, owing to a disinclination on the part of many minor organizations to fill out and return the schedules. However, returns have been procured from a large proportion of the representative unions in the different industries, and these show in a very satisfactory measure the conditions existing in the well-organized trades throughout the State.

Schedules were sent out to every local labor organization in the State during the last week in March asking, among other things, for the number of members idle and the causes therefor, on the last day of the first quarter of the year 1908, *i.e.,* March 31. The membership was not obtained from all of the unions, and as it is essential that the membership of the organizations be known in order to show the state of employment the returns from many unions could not be used in this report. It was very gratifying to the Bureau in its attempt to procure these statistics to find that so many union officials took such a great interest in the work and were willing to furnish complete information relating to their organizations. Many organizations, however, reported they were unable to state the number of members idle, no records being kept by their secretaries, while a few unions, like the musicians' organizations, said that the questions regarding employment were not applicable to their members. It is obvious that these organizations cannot be considered in this report. Two hundred and nineteen local unions, with a total membership of 56,394, made complete returns, and it is to these organizations that the statistics given below are confined.

The following table shows the number of unions making complete returns, their membership, and the number and percentage idle in six of the larger industrial cities in the State:

LOCALITIES.	NUMBER REPORTING		IDLE AT END OF QUARTER	
	Unions	Members	Number	Percentages
The State.	**219**	**56,394**	**8,902**	**15.79**
Boston,	51	20,949	3,026	14.44
Worcester,	14	2,333	228	9.77
Lawrence,	13	1,321	331	25.06
Brockton,	39	15,580	1,704	10.94
Lynn,	14	2,793	209	4.04
New Bedford,	6	8,243	1,216	43.54
Other cities and towns,	82	5,175	2,188	26.54

It will be seen by the preceding table that the proportion of idleness in the State, as a whole, exceeded that in either Boston, Worcester, Brockton, or Lynn, while the proportion of idleness was less in the State as a whole than in the textile cities of Lawrence and New Bedford. Returns made by the unions in Springfield and Holyoke, while not sufficiently representative to warrant presentation in the preceding table, show a smaller proportion of idleness than is shown in the State as a whole, while the returns of the unions in the textile cities of Fall River and Lowell show a considerably centage idle classified by causes.

Causes of Idleness.	Number	Per-centages
Lack of work,	7,626	85.67
Lack of material,	398	4.47
Weather,	113	1.27
Strikes or lockouts,	247	2.78
Disability,	475	5.34
Other causes,	43	0.05
Totals,	8,902	100.00

The preceding table shows the number of members reported idle and the percentage idle classified by causes:

An examination of the table shows that "lack of work" or slack trade was the principal cause of idleness.

In the next table is shown the number of unions reporting and their membership, the number of members idle, and the percentage of idleness, arranged by industries classified according to occupations. No attempt has been made to show what unions reported, it being the practice of the Bureau to present summaries only, and where there was only one union of a certain occupation in the State it has been classified under "Others," in order that the identity of such union should not be disclosed.

Number of Members and Number Idle, March 31, 1908; by Industries and Occupations.

Industries Classified by Occupations.	Number Reporting		Number Idle at End of Quarter	Percentage Idle at End of Quarter
	Unions	Members		
Building and Stone Working.	**76**	**13,645**	**3,134**	**22.97**
Building Trades.	*65*	*8,707*	*2,046*	*23.50*
Bricklayers, masons, and plasterers,	8	1,031	651	63.14
Carpenters,	21	4,485	790	17.61
Electrical workers,	3	113	15	13.27
Lathers,	4	49	5	10.20
Painters, decorators, and paperhangers,	11	1,622	433	26.70
Plumbers, steamfitters, and gasfitters,	11	705	124	17.59
Roofers,	2	239	–	–
Sheet metal workers,	4	418	28	6.70
Others,	1	45	–	–
Stone Working Trades.	*6*	*1,818*	*545*	*29.98*
Granite cutters,	2	1,390	292	21.01
Quarry workers,	2	298	247	82.89
Others,	2	130	6	4.62
Paving Trades.	*1*	*300*	*150*	*50.00*
Pavers,	1	300	150	50.00
Building and Street Labor.	*4*	*2,820*	*393*	*13.94*
Building laborers,	4	2,820	393	13.94
Clothing.	**23**	**16,712**	**1,489**	**8.91**
Boots and Shoes.	*17*	*16,067*	*1,292*	*8.04*
Boot and shoe workers,	17	16,067	1,292	8.04
Hats, Caps, and Furs.	*1*	*80*	*60*	*75.00*
Cap makers,	1	80	60	75.00
Garments.	*4*	*465*	*120*	*25.81*
Garment workers,	2	215	70	32.56
Tailors,	2	250	50	20.00
Shirts, Collars, and Laundry.	*1*	*100*	*17*	*17.00*
Laundry workers,	1	100	17	17.00
Food, Liquors, and Tobacco.	**7**	**4,801**	**528**	**11.00**
Food Products.	*3*	*165*	*15*	*9.09*
Bakers and confectioners,	3	165	15	9.09
Liquors.	*2*	*1,536*	*28*	*1.82*
Brewery workmen,	2	1,536	28	1.82
Tobacco.	*2*	*3,100*	*485*	*15.65*
Cigar makers,	2	3,100	485	15.65
Leather and Rubber Goods.	**1**	**100**	**15**	**15.00**
Leather workers,	1	100	15	15.00

Number of Members and Number Idle, March 31, 1908; by Industries and Occupations — Concluded.

Industries Classified by Occupations.	Number Reporting		Number Idle at End of Quarter	Percentage Idle at End of Quarter
	Unions	Members		
Metals, Machinery, and Shipbuilding.	**27**	**4,224**	**569**	**13.47**
Iron and Steel Manufacture.	*12*	*2,667*	*329*	*12.34*
Boilermakers and helpers,	1	200	15	7.50
Iron molders,	4	401	100	24.94
Machinists,	4	1,942	187	9.63
Pattern makers,	1	30	–	–
Others,	2	94	27	28.72
Miscellaneous Metal Trades.	*2*	*144*	*18*	*12.50*
Metal polishers,	2	144	18	12.50
Stationary Enginemen.	*13*	*1,413*	*322*	*15.71*
Stationary enginemen,	7	435	176	40.46
Stationary firemen,	6	978	46	4.70
Paper and Paper Goods.	**1**	**57**	–	–
Paper and pulp makers,	1	57	–	–
Printing and Publishing, etc.	**18**	**1,657**	**159**	**9.60**
Printing and Publishing.	*16*	*1,525*	*139*	*9.11*
Compositors,	11	590	69	11.69
Printing pressmen,	3	635	45	7.09
Others,	2	300	25	8.33
Bookbinding and Blankbook Making.	*1*	*32*	*7*	*21.88*
Bookbinders,	1	32	7	21.88
Stereotyping.	*1*	*100*	*13*	*13.00*
Stereotypers,	1	100	13	13.00
Public Employment.	**3**	**455**	**353**	**77.58**
City employees,	3	455	353	77.58
Restaurant and Retail Trade.	**5**	**1,003**	**43**	**4.29**
Hotels and Restaurants.	*2*	*353*	*20*	*5.67*
Hotel and restaurant employees,	2	353	20	5.67
Retail Trade.	*3*	*650*	*23*	*3.54*
Retail clerks,	3	650	23	3.54
Textiles.	**14**	**3,903**	**1,528**	**39.15**
Cotton Goods.	*12*	*3,398*	*1,408*	*41.44*
Loomfixers,	3	437	92	21.05
Mule spinners,	4	505	99	19.60
Others,	5	2,456	1,217	49.55
Woolen Goods.	*2*	*505*	*120*	*23.76*
Wool sorters,	2	505	120	23.76
Transportation.	**30**	**8,056**	**817**	**10.14**
Railroads.	*16*	*2,929*	*222*	*7.58*
Car workers,	4	752	204	27.13
Conductors,	1	60	–	–
Maintenance of way employees,	1	89	11	12.36
Railway clerks,	3	415	6	1.45
Street and electric railway employees,	6	1,438	1	0.07
Others,	1	175	–	–
Teaming.	*9*	*3,866*	*557*	*14.41*
Teamsters,	8	3,806	557	14.63
Stable workers,	1	60	–	–
Freight Handling.	*1*	*575*	*25*	*4.35*
Longshoremen,	1	575	25	4.35
Telegraphs.	*4*	*686*	*13*	*1.90*
Telegraphers,	4	686	13	1.90
Wooden Manufactures.	**4**	**901**	**210**	**23.31**
Carriage and wagon workers, wood workers, and upholsterers,	4	901	210	23.31
Miscellaneous.	**10**	**880**	**57**	**6.48**
Glass and Glass Ware.	*1*	*60*	*12*	*20.00*
Flint-glass workers,	1	60	12	20.00
Barbering.	*7*	*675*	*20*	*2.96*
Barbers,	7	675	20	2.96
Theatres and Music.	*2*	*145*	*25*	*17.24*
Theatrical stage employees,	1	45	15	33.33
Others,	1	100	10	10.00
Totals,	**219**	**56,394**	**8,902**	**15.79**

The industry showing the largest proportion of idleness was Public Employment, 77.58 per cent of the members of the unions being unemployed at the end of March. This condition of affairs was largely due to the laying off of city employees in Boston. Then follow, Hats, Caps, and Furs with 75.00 per cent idle, Paving Trades, with 50.00 per cent idle and Cotton Goods, with 41.44 per cent idle.

The occupations showing the greatest amount of unemployment were the quarry workers, with 82.89 per cent idle, due to a strike of 200 members; city employees, with 77.58 per cent idle; cap makers, with 75.00 per cent idle; bricklayers, masons, and plasterers, with 63.14 per cent; miscellaneous cotton-mill operatives, with 49.55 per cent idle; and stationary enginemen, with 40.46 per cent idle.

It will be observed that in the cases of conductors on railroads and of employees on street and electric railways practically no members are reported as idle. On inquiry it has been found to be the practice of the companies to retain their higher grade employees during a dull season by assigning the surplus number of such employees to work of a less high grade, suspending for the time the inferior men.

The next table shows the causes of idleness in detail, by industries classified by occupations:

Membership and Causes of Idleness, March 31, 1908; by Industries and Occupations.

Industries Classified by Occupations	Membership of Unions Reporting	Number of Members Idle on Account of —						Total Number of Members Idle
		Lack of Work	Lack of Material	Weather	Strike or Lockout	Disability	Other Reasons	
Building and Stone Working.	**13,645**	**2,483**	**178**	**113**	**208**	**151**	**1**	**3,134**
Building Trades.	*8,707*	*1,837*	*24*	*103*	*8*	*73*	*1*	*2,046*
Bricklayers, masons, and plasterers,	1,031	605	7	3	–	36	–	651
Carpenters,	4,485	640	17	100	8	24	1	790
Electrical workers,	113	14	–	–	–	1	–	15
Lathers,	49	5	–	–	–	–	–	5
Painters, decorators, and paperhangers,	1,622	426	–	–	–	7	–	433
Plumbers, steamfitters, and gasfitters,	705	119	–	–	–	5	–	124
Roofers,	239	–	–	–	–	–	–	–
Sheet metal workers,	418	28	–	–	–	–	–	28
Others,	45	–	–	–	–	–	–	–
Stone Working.	*1,818*	*161*	*154*	–	*200*	*30*	–	*545*
Granite cutters,	1,390	108	154	–	–	30	–	292
Quarry workers,	298	47	–	–	200	–	–	247
Others,	130	6	–	–	–	–	–	6
Paving.	*300*	*150*	–	–	–	–	–	*150*
Pavers,	300	150	–	–	–	–	–	150
Building and Street Labor.	*2,820*	*335*	–	*10*	–	*48*	–	*393*
Building laborers,	2,820	335	–	10	–	48	–	393
Clothing.	**16,712**	**1,106**	**220**	–	**4**	**154**	**5**	**1,489**
Boots and Shoes.	*16,067*	*922*	*220*	–	–	*150*	–	*1,292*
Boot and shoe workers,	16,067	922	220	–	–	150	–	1,292
Hats, Caps, and Furs.	*80*	*60*	–	–	–	–	–	*60*
Cap makers,	80	60	–	–	–	–	–	60
Garments.	*465*	*110*	–	–	*4*	*1*	*5*	*120*
Garment workers,	215	70	–	–	–	–	–	70
Tailors,	250	40	–	–	4	1	5	50
Shirts, Collars, and Laundry.	*100*	*14*	–	–	–	*3*	–	*17*
Laundry workers,	100	14	–	–	–	3	–	17
Food, Liquors, and Tobacco.	**4,801**	**510**	–	–	**1**	**16**	**1**	**528**
Food Products.	*165*	*13*	–	–	–	*2*	–	*15*
Bakers and confectioners,	165	13	–	–	–	2	–	15
Liquors.	*1,536*	*22*	–	–	*1*	*4*	*1*	*28*
Brewery workmen,	1,536	22	–	–	1	4	1	28
Tobacco.	*3,100*	*475*	–	–	–	*10*	–	*485*
Cigar makers,	3,100	475	–	–	–	10	–	485
Leather and Rubber Goods.	**100**	**10**	–	–	–	**5**	–	**15**
Leather workers,	100	10	–	–	–	5	–	15

Membership and Causes of Idleness, March 31, 1908; by Industries and Occupations — Concluded.

Industries Classified by Occupations.	Membership of Unions Reporting	Number of Members Idle on Account of —						Total Number of Members Idle
		Lack of Work	Lack of Material	Weather	Strike or Lockout	Disability	Other Reasons	
Metals, Machinery, and Shipbuilding.	**4,224**	**498**	–	–	**26**	**43**	**2**	**569**
Iron and Steel Manufacture.	*2,667*	*299*	–	–	–	*28*	*2*	*329*
Boilermakers and helpers,	200	12	–	–	–	3	–	15
Iron molders,	401	87	–	–	–	11	2	100
Machinists,	1,942	173	–	–	–	14	–	187
Pattern makers,	30	–	–	–	–	–	–	–
Others,	94	27	–	–	–	–	–	27
Miscellaneous Metal Trades.	*144*	*12*	–	–	*6*	–	–	*18*
Metal polishers,	144	12	–	–	6	–	–	18
Stationary Enginemen.	*1,413*	*187*	–	–	*20*	*15*	–	*222*
Stationary enginemen,	435	151	–	–	20	5	–	176
Stationary firemen,	978	36	–	–	–	10	–	46
Paper and Paper Goods.	**57**	–	–	–	–	–	–	–
Paper and pulp makers,	57	–	–	–	–	–	–	–
Printing and Publishing, etc.	**1,657**	**90**	–	–	**8**	**58**	**3**	**159**
Printing and Publishing.	*1,525*	*73*	–	–	*8*	*55*	*3*	*139*
Compositors,	590	28	–	–	8	30	3	69
Printing pressmen,	635	45	–	–	–	–	–	45
Others,	300	–	–	–	–	25	–	25
Bookbinding and Blankbook Making.	*32*	*7*	–	–	–	–	–	*7*
Bookbinders,	32	7	–	–	–	–	–	7
Stereotyping.	*100*	*10*	–	–	–	*3*	–	*13*
Stereotypers,	100	10	–	–	–	3	–	13
Public Employment.	**455**	**350**	–	–	–	**3**	–	**353**
City employees,	455	350	–	–	–	3	–	353
Restaurant and Retail Trade.	**1,003**	**35**	–	–	–	**8**	–	**43**
Hotels and Restaurants.	*353*	*16*	–	–	–	*4*	–	*20*
Cooks, waiters, and porters,	353	16	–	–	–	4	–	20
Retail Trade.	*650*	*19*	–	–	–	*4*	–	*23*
Retail clerks,	650	19	–	–	–	4	–	23
Textiles.	**3,903**	**1,497**	–	–	–	–	**31**	**1,528**
Cotton Goods.	*3,398*	*1,377*	–	–	–	–	*31*	*1,408*
Loomfixers,	437	92	–	–	–	–	–	92
Mule spinners,	505	70	–	–	–	–	29	99
Others,	2,456	1,215	–	–	–	–	2	1,217
Woolen Goods.	*505*	*120*	–	–	–	–	–	*120*
Wool sorters,	505	120	–	–	–	–	–	120
Transportation.	**8,056**	**789**	–	–	–	**28**	–	**817**
Railroads.	*2,929*	*219*	–	–	–	*3*	–	*222*
Car workers,	752	204	–	–	–	–	–	204
Conductors,	60	–	–	–	–	–	–	–
Maintenance of way employees,	89	11	–	–	–	–	–	11
Railway clerks,	415	4	–	–	–	2	–	6
Street and electric railway employees,	1,438	–	–	–	–	1	–	1
Other,	175	–	–	–	–	–	–	–
Teaming.	*3,866*	*557*	–	–	–	–	–	*557*
Stablemen,	60	–	–	–	–	–	–	–
Teamsters,	3,806	557	–	–	–	–	–	557
Freight Handling.	*575*	–	–	–	–	*25*	–	*25*
Longshoremen,	575	–	–	–	–	25	–	25
Telegraphs.	*686*	*13*	–	–	–	–	–	*13*
Telegraphers,	686	13	–	–	–	–	–	13
Wooden Manufactures.	**901**	**204**	–	–	–	**6**	–	**210**
Carriage and wagon workers, woodworkers, upholsterers, etc.,	901	204	–	–	–	6	–	210
Miscellaneous.	**880**	**54**	–	–	–	**3**	–	**57**
Barbering.	*675*	*19*	–	–	–	*1*	–	*20*
Barbers,	675	19	–	–	–	1	–	20
Glass and Glassware.	*60*	*10*	–	–	–	*2*	–	*12*
Glass workers,	60	10	–	–	–	2	–	12
Theatres and Music.	*145*	*25*	–	–	–	–	–	*25*
Theatrical stage employees,	45	15	–	–	–	–	–	15
Others,	100	10	–	–	–	–	–	10
Totals,	**56,394**	**7,626**	**398**	**113**	**247**	**475**	**43**	**8,902**

The percentages of members of trade unions, employed in the different industries, who were idle on March 31, 1908, are shown in the following table:

Causes of Idleness, March 31, 1908; by Industries.

Industries.	Percentage Idle on Account of—					
	Lack of Work	Lack of Material	Unfavorable Weather	Strike or Lockout	Disability	Other Reasons
Building and Stone Working,	**79.23**	**5.68**	**3.60**	**6.64**	**4.82**	**0.03**
Building trades,	89.78	1.17	5.04	0.39	3.57	0.05
Stone working,	29.54	28.26	–	36.70	5.50	–
Paving,	100.00	–	–	–	–	–
Building and street labor,	85.24	–	2.55	–	12.21	–
Clothing,	**74.28**	**14.77**	**–**	**0.27**	**10.34**	**0.34**
Boots and shoes,	71.36	17.03	–	–	11.61	–
Hats, caps, and furs,	100.00	–	–	–	–	–
Garments,	91.67	–	–	3.33	0.84	4.16
Shirts, collars, and laundry,	82.35	–	–	–	17.65	–
Food, Liquors, and Tobacco,	**96.59**	**–**	**–**	**0.19**	**3.03**	**0.19**
Food products,	86.67	–	–	–	13.33	–
Liquors,	78.57	–	–	3.57	14.29	3.57
Tobacco,	97.94	–	–	–	2.06	–
Leather and Rubber Goods,	**66.67**	**–**	**–**	**–**	**33.33**	**–**
Metals, Machinery, and Shipbuilding,	**87.52**	**–**	**–**	**4.57**	**7.56**	**0.35**
Iron and steel manufacture,	90.88	–	–	–	8.51	0.61
Miscellaneous metal trades,	66.67	–	–	33.33	–	–
Stationary enginemen,	84.23	–	–	9.01	6.76	–
Paper and Paper Goods,	–	–	–	–	–	–
Printing and Publishing, etc.,	**56.60**	**–**	**–**	**5.03**	**36.48**	**1.89**
Printing and publishing,	52.52	–	–	5.75	39.57	2.16
Bookbinding and blankbook making,	100.00	–	–	–	–	–
Stereotyping,	76.92	–	–	–	23.08	–
Public Employment,	**99.15**	**–**	**–**	**–**	**0.85**	**–**
Restaurant and Retail Trade,	**81.40**	**–**	**–**	**–**	**18.60**	**–**
Hotels and restaurants,	80.00	–	–	–	20.00	–
Retail trade,	82.61	–	–	–	17.39	–
Textiles,	**97.97**	**–**	**–**	**–**	**–**	**2.03**
Cotton goods,	97.80	–	–	–	–	2.20
Woolen goods,	100.00	–	–	–	–	–
Transportation,	**96.57**	**–**	**–**	**–**	**3.43**	**–**
Railroads,	98.65	–	–	–	1.35	–
Teaming,	100.00	–	–	–	–	–
Freight handling,	–	–	–	–	100.00	–
Telegraphs,	100.00	–	–	–	–	–
Wooden Manufactures,	**97.14**	**–**	**–**	**–**	**2.86**	**–**
Miscellaneous,	**94.74**	**–**	**–**	**–**	**5.26**	**–**
Barbering,	95.00	–	–	–	5.00	–
Glass and glassware,	83.33	–	–	–	16.67	–
Theatre and music,	100.00	–	–	–	–	–
Totals,	85.67	4.47	1.27	2.77	5.34	0.48

The above table is very readily comprehended after an explanation of the manner of reading the same. Take for instance Building Trades: According to the table shown on page 180 the total membership reported was 8,707. The total number of idle members was 2,046, or 23.50 per cent. Of those idle on March 31, 1908, 89.78 per cent were idle on account of lack of work; 5.04 per cent on account of unfavorable weather, and 3.57 per cent on account of disability. In other words, out of the total number idle (2,046) about 90 (89.78 per cent) out of every one hundred persons idle were idle on account of lack of work; one (1.17 per cent) out of every one hundred persons were idle on account of lack of material; five out of every one hundred (5.04 per cent) were idle on account of unfavorable weather; less than one-half (0.39 per cent) out of every one hundred were idle on account of strike or lockout; over three (3.57 per cent) out of every one hundred persons idle were idle on account of some disability. The other lines of the table may be read in a similar manner, the percentages given adding across to 100 in each instance.

RECENT COURT DECISIONS AFFECTING LABOR.

I. The Federal Employers' Liability Law Held Unconstitutional.

On January 6, 1908, the Supreme Court of the United States rendered a decision in the cases of Howard v. The Illinois Central R.R. Co. and Brooks v. Southern Pacific Co., 28 Sup. Ct. 141, declaring the Federal Employers' Liability Law unconstitutional, as it regulated intrastate as well as interstate commerce. It was expressly held that if the act could be interpreted as applying only to interstate commerce it would be constitutional. But as it was impossible, under any fair interpretation, to separate that part which applied to interstate from that which applied to intrastate commerce, the entire law was held void.

In the early part of January, 1907, this law was held unconstitutional by the Circuit Court of the United States for the Western District of Tennessee in the case of Howard v. The Illinois Central R.R. Co., 148 Fed. 997, and by the Circuit Court of the United States for the Western District of Kentucky in the case of Brooks v. Southern Pacific Co., 148 Fed. 986. Later in the year the act was declared constitutional by the Circuit Court of the United States for the Southern Division of the Eastern District of Georgia in the case of Snead v. Central of Georgia Ry. Co., 151 Fed. 608, by the Circuit Court of the United States for the District of Minnesota in the case of Kelley v. Great Northern Ry. Co., 152 Fed. 211, and by the Circuit Court of the United States for the Eastern Division of the Eastern District of Arkansas in the case of Spain v. St. Louis & San Francisco R.R. Co., 151 Fed. 522.

The two decisions declaring the law void were reviewed by this Bureau in Labor Bulletin No. 49, May, 1907, pp. 305–308, and the decisions in favor of the law's constitutionality were considered in Labor Bulletin No. 54, November, 1907, pp. 185, 186.

The decision of the Supreme Court of the United States was not unanimous, Chief Justice Fuller and Justices White, Day, Peckham, and Brewer being of the opinion that the law was unconstitutional, while Justices Moody, Harlan, McKenna, and Holmes held dissenting opinions. The justices dissenting were of the opinion that the act might be interpreted as applying only to employees while engaged in interstate commerce, and so would be constitutional.

Justice White delivered the opinion of the Court:

> To dispose of these cases it is necessary to decide a fundamental question which is equally decisive as to both. They were argued at the bar together, and because of their unity have been considered at the same time.
>
> . . . Recovery was sought in each case of damages occasioned by the death of the respective intestates while serving as a fireman on a locomotive actually engaged in moving an interstate commerce train. In each of the cases it was alleged that the intestate met his death through no fault of his, but solely through the fault of employees of the company, who were his fellow-servants. In both the right of action was expressly based upon the act of Congress of July 11, 1906, entitled, "An Act relating to liability of common carriers in the District of Columbia and Territories and common carriers engaged in commerce between the States and between the States and foreign nations to their employees." By demurrer in each of the cases the act relied upon was assailed as being repug-

nant to the Constitution of the United States. In both cases the Department of Justice, on behalf of the United States, asked to be allowed to intervene for the purpose of supporting the constitutionality of the act. In the first (the Howard) case this request was granted. In the second (the Brooks) case the court, while denying the request upon the ground that it knew of no law authorizing such an intervention simply because the validity of an act of Congress was drawn in question, nevertheless permitted the United States to be heard as a friend of the court. In both cases the act was held to be unconstitutional, the demurrer was sustained and the declarations dismissed. These direct writs of error were then prosecuted, and at bar the cases have been argued, by printed brief and orally, not only by the parties in interest, but on behalf of the United States through the Attorney-General as a friend of the court.

As the issue to be decided is whether the courts below were right in holding that the act of Congress, which was the basis of the respective causes of action, was repugnant to the Constitution of the United States, we reproduce the text of that act.

CHAPTER 3073. AN ACT RELATING TO THE LIABILITY OF COMMON CARRIERS IN THE DISTRICT OF COLUMBIA AND TERRITORIES AND COMMON CARRIERS ENGAGED IN COMMERCE BETWEEN THE STATES AND BETWEEN THE STATES AND FOREIGN NATIONS TO THEIR EMPLOYEES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every common carrier engaged in trade or commerce in the District of Columbia, or in any Territory of the United States, or between the several States, or between any Territory and another, or between any Territory or Territories and any State or States, or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, shall be liable to any of its employees, or, in the case of his death, to his personal representative for the benefit of his widow and children, if any; if none, then for his parents; if none, then for his next of kin dependent upon him, for all damages which may result from the negligence of any of its officers, agents, or employees, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, roadbed, ways or works.

SEC. 2. That in all actions hereafter brought against any common carriers to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery where his contributory negligence was slight and that of the employer was gross in comparison, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee. All questions of negligence and contributory negligence shall be for the jury.

SEC. 3. That no contract of employment, insurance, relief, benefit, or indemnity for injury or death entered into by or on behalf of any employee, nor the acceptance of any such insurance, relief, benefit, or indemnity by the person entitled thereto, shall constitute any bar or defense to any action brought to recover damages for personal injuries to or death of such employee: *Provided, however*, That upon the trial of such action against any common carrier the defendant may set off therein any sum it has contributed toward any such insurance, relief, benefit, or indemnity that may have been paid to the injured employee, or in case of his death to his personal representative.

SEC. 4. That no action shall be maintained under this act unless commenced within one year from the time the cause of action accrued.

SEC. 5. That nothing in this act shall be held to limit the duty of common carriers by railroads or impair the rights of their employees under the safety-appliance act of March second, eighteen hundred and ninety-three, as amended April first, eighteen hundred and ninety-six, and March second, nineteen hundred and three. *Approved June 11, 1906.*

. . . In testing the constitutionality of the act, we must confine ourselves to the power to pass it and may not consider evils which it is supposed will arise from the execution of the law, whether they be real or imaginary.

. . . The nature and extent of the power of Congress to regulate commerce . . . has been so often here considered and has been so fully elaborated in recent decisions,[1] . . . that we content ourselves, for the purposes of this case, with repeating the broad definition of the commerce power as expounded by Mr.

[1] Lottery Case, 188 U. S. 321, 345, et seq.; Northern Securities Co. v. United States, 193 U. S. 197, 335, and cases cited.

Chief Justice Marshall in Gibbons v. Ogden, 9 Wheat. 1, 196, where he said:

"We are now arrived at the inquiry, What is this power? It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent and acknowledges no limitations other than are prescribed in the Constitution. . . . If, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations, and among the several States, is vested in Congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States."

Accepting, as we now do and as has always been done, this comprehensive statement of the power of Congress, we also adopt and reiterate the perspicuous statement made in the same case (p. 194), of those matters of State control which are not embraced in the grant of authority to Congress to regulate commerce:

"It is not intended to say that these words comprehend that commerce, which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States. Such a power would be inconvenient and is certainly unnecessary. Comprehensive as the word 'among' is, it may very properly be restricted to that commerce which concerns more States than one. . . . The genius and character of the whole Government seem to be, that its action is to be applied to all the external concerns of the Nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the Government."

We think the orderly discussion of the question may best be met by disposing of the affirmative propositions relied on to establish that the statute conflicts with the Constitution.

In the first place, it is asserted that there is a total want of power in Congress in any conceivable aspect to regulate the subject with which the act deals. In the second place it is insisted the act is void, even although it be conceded, for the sake of argument, that some phases of the subject with which it is concerned may be within the power of Congress, because the act is confined not to such phases, but asserts control over many things not in any event within the power to regulate commerce.

. . . . . .

1. The proposition that there is an absolute want of power in Congress to enact the statute is based on the assumption that, as the statute is solely addressed to the regulation of the relations of the employer to those whom he employs and the relation of those employed by him among themselves, it deals with subjects which cannot under any circumstances come within the power conferred upon Congress to regulate commerce.

As it is patent that the act does regulate the relation of master and servant in the cases to which it applies, it must follow, that the act is beyond the authority of Congress if the proposition just stated be well founded. But we may not test the power of Congress to regulate commerce solely by abstractly considering the particular subject to which a regulation relates, irrespective of whether the regulation in question is one of interstate commerce. On the contrary, the test of power is not merely the matter regulated, but whether the regulation is directly one of interstate commerce, or is embraced within the grant conferred on Congress to use all lawful means necessary and appropriate to the execution of the power to regulate

commerce. We think the unsoundness of the contention, that because the act regulates the relation of master and servant, it is unconstitutional, because under no circumstances and to no extent can the regulation of such subject be within the grant of authority to regulate commerce, is demonstrable. We say this because we fail to perceive any just reason for holding that Congress is without power to regulate the relation of master and servant, to the extent that regulations adopted by Congress on that subject are solely confined to interstate commerce, and therefore are within the grant to regulate that commerce or within the authority given to use all means appropriate to the exercise of the powers conferred. To illustrate: Take the case of an interstate railway train, that is, a train moving in interstate commerce, and the regulation of which therefore is, in the nature of things, a regulation of such commerce. It cannot be said that because a regulation adopted by Congress as to such train when so engaged in interstate commerce deals with the relation of the master to the servants operating such train or the relations of the servants engaged in such operation between themselves, that it is not a regulation of interstate commerce. This must be, since to admit the authority to regulate such train, and yet to say that all regulations which deal with the relation of master and servants engaged in its operation are invalid for want of power would be but to concede the power and then to deny it, or at all events to recognize the power and yet to render it incomplete.

Because of the reasons just stated we might well pass from the consideration of the subject. We add, however, that we think the error of the proposition is shown by previous decisions of this court.[1]

2. But it is argued, even though it be conceded that the power of Congress may be exercised as to the relation of master and servant in matters of interstate commerce, that power cannot be lawfully extended so as to include the regulation of the relation of master and servant, or of servants among themselves, as to things which are not interstate commerce. From this it is insisted the repugnancy of the act to the Constitution is clearly shown, as the face of the act makes it certain that the power which it asserts extends not only to the relation of master and servant and servants among themselves as to things which are wholly interstate commerce, but embraces those relations as to matters and things domestic in their character and which do not come within the authority of Congress. To test this proposition requires us to consider the text of the act.

From the first section it is certain that the act extends to every individual or corporation who may engage in interstate commerce as a common carrier. Its all-embracing words leave no room for any other conclusion. It may include, for example, steam railroads, telegraph lines, telephone lines, the express business, vessels of every kind, whether steam or sail, ferries, bridges, wagon lines, carriages, trolley lines, etc. Now, the rule which the statute establishes for

[1] The want of power in a State to interfere with an interstate commerce train, if thereby a direct burden is imposed upon interstate commerce, is settled beyond question. Mississippi R. Com. v. Illinois Central R.R., 203 U. S. 335, 343, and cases cited; Atlantic Coast Line R.R. v. Wharton et al., Railroad Commissioners, 207 U. S. 328. And decisions, Sherlock v. Alling, 93 U. S. 99; Missouri Pacific Ry. Co. v. Mackey, 127 U. S. 205; Minneapolis, etc. Ry. Co. v. Herrick, 127 U. S. 210; Chicago, etc. Ry. Co. v. Pontius, 157 U. S. 209; Tullis v. Lake Erie & Western R.R., 175 U. S. 348, holding that State statutes which regulated the relation of master and servant were applicable to those actually engaged in an operation of interstate commerce, because the State power existed until Congress acted, by necessary implication, refute the contention that a regulation of the subject, confined to interstate commerce, when adopted by Congress would be necessarily void because the regulation of the relation of master and servant was, however, intimately connected with interstate commerce, beyond the power of Congress. And a like conclusion also persuasively results from previous rulings of this court concerning the act of Congress, known as the Safety Appliance Act. Johnson v. Southern Pacific Co. 196 U. S. 1; Schlemmer v. Buffalo, Rochester, and Pittsburg Ry. Co., 205 U. S. 1.

the purpose of determining whether all the subjects to which it relates are to be controlled by its provisions is that any one who conducts such business be a "common carrier engaged in trade or commerce in the District of Columbia, or in any Territory of the United States, or between the several States," etc. That is, the subjects stated all come within the statute when the individual or corporation is a common carrier who engages in trade or commerce between the States, etc. From this it follows that the statute deals with all the concerns of the individuals or corporations to which it relates if they engage as common carriers in trade or commerce between the States, etc., and does not confine itself to the interstate commerce business which may be done by such persons. Stated in another form, the statute is addressed to the individuals or corporations who are engaged in interstate commerce and is not confined solely to regulating the interstate commerce business which such persons may do — that is, it regulates the persons because they engage in interstate commerce and does not alone regulate the business of interstate commerce.

And the conclusion thus stated, which flows from the text of the act concerning the individuals or corporations to which it is made to apply, is further demonstrated by a consideration of the text of the statute defining the servants to whom it relates.

Thus the liability of a common carrier is declared to be in favor of "any of its employees." As the word "any" is unqualified, it follows that the liability to the servant is coextensive with the business done by the employers whom the statute embraces; that is, it is in favor of any of the employees of all carriers who engage in interstate commerce. This also is the rule as to the one who otherwise would be a fellow-servant, by whose negligence the injury or death may have been occasioned, since it is provided that the right to recover on the part of any servant will exist, although the injury for which the carrier is to be held resulted from "the negligence of any of its officers, agents, or employees."

The act then being addressed to all common carriers engaged in interstate commerce, and imposing a liability upon them in favor of any of their employees, without qualification or restriction as to the business in which the carriers or their employees may be engaged at the time of the injury, of necessity includes subjects wholly outside of the power of Congress to regulate commerce. Without stopping to consider the numerous instances where although a common carrier is engaged in interstate commerce such carrier may in the nature of things also transact business not interstate commerce, although such local business may indirectly be related to interstate commerce, a few illustrations showing the operation of the statute as to matters wholly independent of interstate commerce will serve to make clear the extent of the power which is exerted by the statute. Take a railroad engaged in interstate commerce, having a purely local branch operated wholly within a State. Take again the same road having shops for repairs, and it may be for construction work, as well as a large accounting and clerical force, and having, it may be, storage elevators and warehouses, not to suggest besides the possibility of its being engaged in other independent enterprises. Take a telegraph company engaged in the transmission of interstate and local messages. Take an express company engaged in local as well as in interstate business. Take a trolley line moving wholly within a State as to a large part of its business and yet as to the remainder crossing the State line.

As the act thus includes many subjects wholly beyond the power to regulate commerce and depends for its sanction upon that authority, it results that the act is repugnant to the Constitution and cannot be enforced unless there be merit in the propositions advanced to show that the statute may be saved.

On the one hand, while conceding

that the act deals with all common carriers who are engaged in interstate commerce because they so engage, and indeed, while moreover conceding that the act was originally drawn for the purpose of reaching all the employees of railroads engaged in interstate commerce to which it is said the act in its original form alone related, it is yet insisted that the act is within the power of Congress, because one who engages in interstate commerce thereby comes under the power of Congress as to all his business and may not complain of any regulation which Congress may choose to adopt. These contentions are thus summed up in the brief filed on behalf of the Government:

"It is the *carrier* and not its employees that the act seeks to regulate, and the carrier is subject to such regulations because it is engaged in interstate commerce.

. . . . . .

"By engaging in interstate commerce the carrier chooses to subject itself and its business to the control of Congress, and cannot be heard to complain of such regulations.

". . . It is submitted that Congress can make a common carrier engaged in interstate commerce liable to *any one* for its negligence who is affected by it; and if it can do that, necessarily it can make such carrier liable to all of its employees."

On the other hand, the same brief insists that these propositions are irrelevant, because the statute may be interpreted so as to confine its operation wholly to interstate commerce or to means appropriate to the regulation of that subject, and hence relieves from the necessity of deciding whether, if the statute could not be so construed, it would be constitutional. In the oral discussion at bar this latter view was earnestly insisted upon by the Attorney-General. Assuming, as we do, that the propositions are intended to be alternative, we disregard the order in which they are pressed in argument, and therefore pass for a moment the consideration of the proposition that the statute is constitutional, though it includes all the subjects which we have found it to embrace, in order to weigh the contention that it is susceptible on its face of a different meaning from that which we have given it, or that such result can be accomplished by the application of the rules of interpretation which are relied upon.

So far as the face of the statute is concerned, the argument is this, that because the statute says carriers engaged in commerce between the States, etc., therefore the act should be interpreted as being exclusively applicable to the interstate commerce business and none other of such carriers, and that the words "any employee" as found in the statute should be held to mean any employee when such employee is engaged only in interstate commerce. But this would require us to write into the statute words of limitation and restriction not found in it. But if we could bring ourselves to modify the statute by writing in the words suggested the result would be to restrict the operation of the act as to the District of Columbia and the Territories. We say this because immediately preceding the provision of the act concerning carriers engaged in commerce between the States and Territories is a clause making it applicable to "every common carrier engaged in trade or commerce in the District of Columbia or in any Territory of the United States." It follows, therefore, that common carriers in such Territories, even although not engaged in interstate commerce, are by the act made liable to "any" of their employees, as therein defined. The legislative power of Congress over the District of Columbia and the Territories being plenary and not depending upon the interstate commerce clause, it results that the provision as to the District of Columbia and the Territories, if standing alone, could not be questioned. Thus it would come to pass, if we could bring ourselves to modify the statute by writing in the words suggested, that is, by causing the act to

read "any employee when engaged in interstate commerce," we would restrict the act to the District of Columbia and the Territories, and thus destroy it in an important particular. To write into the act the qualifying words, therefore, would be but adding to its provisions in order to save it in one aspect, and thereby to destroy it in another; that is, to destroy in order to save and to save in order to destroy.

The principles of construction invoked are undoubted, but are inapplicable. Of course, if it can be lawfully done, our duty is to construe the statute so as to render it constitutional. But this does not imply, if the text of an act is unambiguous, that it may be rewritten to accomplish that purpose. Equally clear is it, generally speaking, that where a statute contains provisions which are constitutional and others which are not, effect may be given to the legal provisions by separating them from the illegal. But this applies only to a case where the provisions are separable and not dependent one upon the other, and does not support the contention that that which is indivisible may be divided. Moreover, even in a case where legal provisions may be severed from those which are illegal, in order to save, the rule applies only where it is plain that Congress would have enacted the legislation with the unconstitutional provisions eliminated. All these principles are so clearly settled as not to be open to controversy. They were all, after a full review of the authorities, restated and reapplied in a recent case. Illinois Central Railroad v. McKendree, 203 U. S. 514, and authorities there cited.

As the act before us by its terms relates to every common carrier engaged in interstate commerce and to any of the employees of every such carrier, thereby regulating every relation of a carrier engaged in interstate commerce with its servants and of such servants among themselves, we are unable to say that the statute would have been enacted had its provisions been restricted to the limited relations of that character which it was within the power of Congress to regulate.

. . . . . .

3. It remains only to consider the contention which we have previously quoted, that the act is constitutional, although it embraces subjects not within the power of Congress to regulate commerce, because one who engages in interstate commerce thereby submits all his business concerns to the regulating power of Congress. To state the proposition is to refute it. It assumes that because one engages in interstate commerce he thereby endows Congress with power not delegated to it by the Constitution, in other words, with the right to legislate concerning matters of purely State concern. It rests upon the conception that the Constitution destroyed that freedom of commerce which it was its purpose to preserve, since it treats the right to engage in interstate commerce as a privilege which cannot be availed of except upon such conditions as Congress may prescribe, even although the conditions would be otherwise beyond the power of Congress. It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local, would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the States as to all conceivable matters which from the beginning have been, and must continue to be, under their control so long as the Constitution endures.

4. Reference was made to the report of a committee submitted to the House of Representatives on the coming in of the bill which finally became the act in question. We content ourselves on this subject with saying that that report, we think, instead of adding force to the argument that the plain terms of the act should be disregarded, tends to the contrary. And the same observation is appropriate to the reference made to the text of the Safety Appliance Act of March 2, 1893, which, it is insisted, furnishes a guide which, if followed, would

enable us to disregard the text of the act. We say this because the face of that act clearly refutes the argument based upon it. It is true that the act, like the one we are considering, is addressed to every common carrier engaged in interstate commerce, but this direction is followed by provisions expressly limiting the scope and effect of the act to interstate commerce, which are wholly superfluous if the argument here made concerning the statute before us be sound.

. . . . . .

Concluding, as we do, that the statute, whilst it embraces subjects within the authority of Congress to regulate commerce, also includes subjects not within its constitutional power, and that the two are so interblended in the statute that they are incapable of separation, we are of the opinion that the courts below rightly held the statute to be repugnant to the Constitution and non-enforcible; and the judgments below are, therefore, *Affirmed.*

II. The Constitutionality of the Oregon Law Restricting the Labor of Women to Ten Hours a Day Upheld by the Supreme Court of the United States.

On February 24, 1908, the Supreme Court of the United States handed down an opinion in the case of Muller v. State of Oregon, in which the Oregon Statute, providing that "no female [shall] be employed in any mechanical establishment, or factory, or laundry . . . more than 10 hours during any one day" was constitutional. The decision of the Court was based on the principle that the physical constitution of woman is such as to make long hours of labor a menace to her health and justifies an exercise of the police power of the State to limit her hours in the interests of the public health, and that her economic position in society is such as to make her less independent than men and therefore justifies limitation of freedom of contract in her case for her own protection and to secure to her equal rights with men.

Similar laws have been sustained by the highest courts in Massachusetts, Nebraska, Oregon, Pennsylvania, and Washington, but in Illinois the act was held unconstitutional.

The decision was unanimous. Justice Brewer delivered the opinion of the Court.

On February 19, 1903, the Legislature of the State of Oregon passed an act (Session Laws, 1903, p. 148) the first section of which is in these words:

SECTION 1. That no female [shall] be employed in any mechanical establishment, or factory, or laundry in this State more than 10 hours during any one day. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than 10 hours during the 24 hours of any one day.

Section 3 made a violation of the provisions of the prior sections a misdemeanor, subject to a fine of not less than $10 nor more than $25. On September 18, 1905, an information was filed in the Circuit Court of the State for the county of Multnomah, charging that the defendant "on the 4th day of September, A. D. 1905, in the county of Multnomah and State of Oregon, then and there being the owner of a laundry, known as the Grand Laundry, in the city of Portland, and the employer of females therein, did then and there unlawfully permit and suffer one Joe Haselbock, he, the said Joe Haselbock, then and there being an overseer, superintendent and agent of said Curt Muller, in the said Grand Laundry, to require a female, to wit, one Mrs. E. Gotcher, to work more than 10 hours in said laundry on said 4th day of September, A. D. 1905, contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Oregon."

A trial resulted in a verdict against the defendant, who was sentenced to pay a fine of $10. The Supreme Court of

the State affirmed the conviction (48 Ore. 252), whereupon the case was brought here on writ of error.

The single question is the constitutionality of the statute under which the defendant was convicted so far as it affects the work of a female in a laundry. That it does not conflict with any provisions of the State constitution is settled by the decision of the Supreme Court of the State. The contentions of the defendant, now plaintiff in error, are thus stated in his brief:

"(1) Because the statute attempts to prevent persons, *sui juris,* from making their own contracts, and thus violates the provisions of the Fourteenth Amendment, as follows:

"'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'

"(2) Because the statute does not apply equally to all persons similarly situated, and is class legislation.

"(3) The statute is not a valid exercise of the police power. The kinds of work proscribed are not unlawful, nor are they declared to be immoral or dangerous to the public health; nor can such a law be sustained on the ground that it is designed to protect women on account of their sex. There is no necessary or reasonable connection between the limitation prescribed by the act and the public health, safety, or welfare."

It is the law of Oregon that women, whether married or single, have equal contractual and personal rights with men. As said by Chief Justice Wolverton, in First National Bank v. Leonard, 36 Ore. 390, 396, after a review of the various statutes of the State upon the subject:

"We may therefore say with perfect confidence that, with these three sections upon the statute book, the wife can deal, not only with her separate property, acquired from whatever source, in the same manner as her husband can with property belonging to him, but that she may make contracts and incur liabilities, and the same may be enforced against her, the same as if she were a *feme sole.* There is now no residuum of civil disability resting upon her which is not recognized as existing against the husband. The current runs steadily and strongly in the direction of the emancipation of the wife, and the policy, as disclosed by all recent legislation upon the subject in this State, is to place her upon the same footing as if she were a *feme sole,* not only with respect to her separate property, but as it affects her right to make binding contracts; and the most natural corollary to the situation is that the remedies for the enforcement of liabilities incurred are made co-extensive and co-equal with such enlarged conditions."

It thus appears that, putting to one side the elective franchise, in the matter of personal and contractual rights they stand on the same plane as the other sex. Their rights in these respects can no more be infringed than the equal rights of their brothers. We held in Lochner v. New York, 198 U. S. 45, that a law providing that no laborer shall be required or permitted to work in bakeries more than sixty hours in a week or ten hours in a day was not as to men a legitimate exercise of the police power of the State, but an unreasonable, unnecessary, and arbitrary interference with the right and liberty of the individual to contract in relation to his labor, and as such was in conflict with, and void under, the Federal Constitution. That decision is invoked by plaintiff in error as decisive of the question before us. But this assumes that the difference between the sexes does not justify a different rule respecting a restriction of the hours of labor.

In patent cases counsel are apt to open the argument with a discussion of the state of the art. It may not be amiss, in the present case, before examining the constitutional question, to notice the course of legislation as well as expressions of opinion from other than judi-

cial sources. In the brief filed by Mr. Louis D. Brandeis, for the defendant in error, is a very copious collection of all these matters, an epitome of which is found in the margin.[1]

While there have been but few decisions bearing directly upon the question, the following sustain the constitutionality of such legislation: Commonwealth v. Hamilton Mfg. Co., 125 Mass. 383; Wenham v. State, 65 Neb. 394, 400, 406; State v. Buchanan, 29 Wash. 602; Commonwealth v. Beatty, 15 Pa. Sup. Ct. 5, 17; against them in the case of Ritchie v. People, 155 Ill. 98.

The legislation and opinions referred to in the margin may not be, technically speaking, authorities, and in them is little or no discussion of the constitutional question presented to us for determination, yet they are significant of a widespread belief that woman's physical structure, and the functions she performs in consequence thereof, justify special legislation restricting or qualifying the conditions under which she should be permitted to toil. Constitutional questions, it is true, are not settled by even a consensus of present public opinion, for it is the peculiar value of a written constitution that it places in unchanging form limitations upon legislative action, and thus gives a permanence and stability to popular government which otherwise would be lacking. At the same time, when a question of fact is debated and debatable, and the extent to which a special constitutional limitation goes is affected by the truth in respect to that fact, a widespread and long continued belief concerning it is worthy of consideration. We take judical cognizance of all matters of general knowledge.

It is undoubtedly true, as more than once declared by this court, that the general right to contract in relation to one's business is part of the liberty of the individual, protected by the Fourteenth Amendment to the Federal Constitution; yet it is equally well settled that this liberty is not absolute and extending to all contracts, and that a State may, without conflicting with the provisions of the Fourteenth Amendment, restrict in many respects the individual's power of contract. Without stopping to discuss at length the extent to which a State may act in this respect, we refer to the following cases in which the question has been considered: Allgeyer v. Louisiana, 165 U. S. 578; Holden v. Hardy, 169 U. S. 366; Lochner v. New York, 198 U. S. 45.

That woman's physical structure and the performance of maternal functions

[1] The following legislation of the States impose restriction in some form or another upon the hours of labor that may be required of women: Massachusetts, 1874, Rev. Laws 1902, c. 106, § 24; Rhode Island, 1885, Acts and Resolves 1902, c. 994, p. 73; Louisiana, 1886, Rev. Laws 1904, Vol. I, § 4, p. 989; Connecticut, 1887, Gen. St. Rev. 1902, § 4691; Maine, 1887, Rev. St. 1903, c. 40, § 48; New Hampshire, 1887, Laws 1907, c. 94, p. 95; Maryland, 1888, Pub. Gen. Laws, 1903, art. 100, § 1; Virginia, 1890, Code 1904, tit. 51a, c. 178a, § 3657b; Pennsylvania, 1897, Laws, 1905, No. 226, p. 352; New York, 1899, Laws, 1907, c. 507, § 77, subd. 3, p. 1078; Nebraska, 1899, Comp. St. 1905, § 7955, p. 1986; Washington, St. 1901, c. 68, §1, p. 118; Colorado, Acts 1903, c. 138, § 3, p. 310; New Jersey, 1892, Gen. St. 1895, p. 2350, §§ 66, 67; Oklahoma, 1890, Rev. St. 1903, c. 25, art. 58, § 729; North Dakota, 1877, Rev. Code, 1905, § 9440. South Dakota, 1877, Rev. Code (Penal Code, § 764), p. 1185; Wisconsin, 1867, Code, 1898, § 1728; South Carolina, Acts 1907, No. 233.

In foreign legislation Mr. Brandeis calls attention to these statutes: Great Britain, 1844, Law 1901, 1 Edw. VII, c. 22; France, 1848, Act Nov. 2, 1892, and March 30, 1900; Switzerland, Canton of Glarus, 1848, Federal Law, 1877, art. 2, § 1; Austria, 1855, Acts 1897, art. 96a, §§ 1–3; Holland, 1889, art. 5, § 1; Italy, June 19, 1902, art. 7; Germany, Laws, 1891.

Then follow extracts from over 90 reports of committees, bureaus of statistics, commissioners of hygiene, inspectors of factories, both in this country and in Europe, to the effect that long hours of labor are dangerous for women, primarily because of their special physical organization. The matter is discussed in these reports in different aspects, but all agree as to the danger. It would of course take too much space to give these reports in detail. Following them are extracts from similar reports discussing the general benefits of short hours from an economic aspect of the question. In many of these reports individual instances are given tending to support the general conclusion. Perhaps the general scope and character of all these reports may be summed up in what an inspector for Hanover says: "The reasons for the reduction of the working day to ten hours — (a) the physical organization of women, (b) her maternal functions, (c) the rearing and education of the children, (d) the maintenance of the home — are all so important and so far-reaching that the need for such reduction need hardly be discussed."

place her at a disadvantage in the struggle for subsistence is obvious. This is especially true when the burdens of motherhood are upon her. Even when they are not, by abundant testimony of the medical fraternity continuance for a long time on her feet at work, repeating this from day to day, tends to injurious effects upon the body, and as healthy mothers are essential to vigorous offspring, the physical well-being of woman becomes an object of public interest and care in order to preserve the strength and vigor of the race.

Still again, history discloses the fact that woman has always been dependent upon man. He established his control at the outset by superior physical strength, and this control in various forms, with diminishing intensity, has continued to the present. As minors, though not to the same extent, she has been looked upon in the courts as needing especial care that her rights may be preserved. Education was long denied her, and while now the doors of the schoolroom are opened and her opportunities for acquiring knowledge are great, yet even with that and the consequent increase of capacity for business affairs it is still true that in the struggle for subsistence she is not an equal competitor with her brother. Though limitations upon personal and contractual rights may be removed by legislation, there is that in her disposition and habits of life which will operate against a full assertion of those rights. She will still be where some legislation to protect her seems necessary to secure a real equality of right. Doubtless there are individual exceptions, and there are many respects in which she has an advantage over him; but looking at it from the viewpoint of the effort to maintain an independent position in life, she is not upon an equality. Differentiated by these matters from the other sex, she is properly placed in a class by herself, and legislation designed for her protection may be sustained, even when like legislation is not necessary for men and could not be sustained. It is impossible to close one's eyes to the fact that she still looks to her brother and depends upon him. Even though all restrictions on political, personal, and contractual rights were taken away, and she stood, so far as statutes are concerned, upon an absolutely equal plane with him, it would still be true that she is so constituted that she will rest upon and look to him for protection; that her physical structure and a proper discharge of her maternal functions — having in view not merely her own health, but the well-being of the race — justify legislation to protect her from the greed as well as the passion of man. The limitations which this statute places upon her contractual powers, upon her right to agree with her employer as to the time she shall labor, are not imposed solely for her benefit, but also largely for the benefit of all. Many words cannot make this plainer. The two sexes differ in structure of body, in the functions to be performed by each, in the amount of physical strength, in the capacity for long-continued labor, particularly when done standing, the influence of vigorous health upon the future well-being of the race, the self-reliance which enables one to assert full rights, and in the capacity to maintain the struggle for subsistence. This difference justifies a difference in legislation and upholds that which is designed to compensate for some of the burdens which rest upon her.

We have not referred in this discussion to the denial of the elective franchise in the State of Oregon, for while that may disclose a lack of political equality in all things with her brother, that is not of itself decisive. The reason runs deeper, and rests in the inherent difference between the two sexes, and in the different functions in life which they perform.

For these reasons, and without questioning in any respect the decision in Lochner v. New York, we are of the opinion that it cannot be adjudged that the act in question is in conflict with the Federal Constitution, so far as it respects the work of a female in a laundry, and the judgment of the Supreme Court of Oregon is affirmed.

III. The Boycott Held to be a Combination in Restraint of Trade or Commerce in Violation of the Anti-trust Act of July 2, 1890.

The Supreme Court of the United States on February 3, 1908, handed down a decision in the case of Loewe v. Lawlor, 28 Sup. Ct. 301, in which it was held that a combination by members of labor organizations to destroy an existing interstate traffic in hats by preventing the manufacturers, through the instrumentality of a boycott, from manufacturing hats intended for transportation beyond the State and to prevent their vendees in other States from reselling the hats so transported, and from further negotiating with the manufacturers for the purchase and transportation of such hats from the place of manufacture to the various places of destination, is a combination in restraint of trade or commerce among the several States, within the meaning of the Anti-trust Act of July 2, 1890, the members of which are liable for the threefold damages which, under Section 7 of that act, may be recovered by those injured in business or property by violations of the act, although a negligible amount of intrastate business may be affected in carrying out the combination, and although the members of the combination are not themselves engaged in interstate commerce.

The decision was unanimous. Chief Justice Fuller delivered the opinion of the Court and said:

This was an action brought in the Circuit Court for the District of Connecticut under Section 7 of the Anti-trust Act of July 2, 1890, claiming threefold damages for injuries inflicted on plaintiffs by combination or conspiracy declared to be unlawful by the act.

Defendants filed a demurrer to the complaint, assigning general and special grounds. The demurrer was sustained as to the first six paragraphs, which rested on the ground that the combination stated was not within the Sherman Act, and this rendered it unnecessary to pass upon any other questions in the case; and upon plaintiffs declining to amend their complaint the court dismissed it with costs. 148 Fed. 924;[1] and see 142 Fed. 216; 130 Fed. 633.

The case was then carried by writ of error to the Circuit Court of Appeals for the Second Circuit, and that court, desiring the instruction of this court upon a question arising on the writ of error, certified that question to this court. The certificate consisted of a brief statement of facts, and put the question thus: "Upon this state of facts can plaintiffs maintain an action against defendants under Section 7 of the Anti-trust Act of July 2, 1890?"

After the case on certificate had been docketed here plaintiffs in error applied, and defendants in error joined in the application, to this court to require the whole record and cause to be sent up for its consideration. The application was granted, and the whole record and cause being thus brought before this court it devolved upon the court, under Section 6 of the Judiciary Act of 1891, to "decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal."

The case comes up, then, on complaint and demurrer, and we give the complaint.

. . . The complaint averred that plaintiffs were manufacturers of hats in Danbury, Connecticut, having a factory there, and were engaged in an interstate trade in some 20 States other than Connecticut; that they were practically dependent upon such interstate trade to consume the product of their factory, only a small percentage of their entire output being consumed in Con-

[1] This decision was reviewed by this Bureau in Labor Bulletin No. 55, December, 1907, p. 262.

necticut; that at the time the alleged combination was formed they were in the process of manufacturing a large number of hats for the purpose of fulfilling engagements then actually made with consignees and wholesale dealers in States other than Connecticut, and that if prevented from carrying on the work of manufacturing these hats they would be unable to complete their engagements.

That defendants were members of a vast combination called The United Hatters of North America, comprising about 9,000 members and including a large number of subordinate unions, and that they were combined with some 1,400,000 others into another association known as The American Federation of Labor, of which they were members, whose members resided in all the places in the several States where the wholesale dealers in hats and their customers resided and did business; that defendants were "engaged in a combined scheme and effort to force all manufacturers of fur hats in the United States, including the plaintiffs, against their will and their previous policy of carrying on their business, to organize their workmen in the departments of making and finishing, in each of their factories, into an organization, to be part and parcel of the said combination known as The United Hatters of North America, or as the defendants and their confederates term it, to unionize their shops, with the intent thereby to control the employment of labor in and the operation of said factories, and to subject the same to the direction and control of persons, other than the owners of the same, in a manner extremely onerous and distasteful to such owners, and to carry out such scheme, effort and purpose, by restraining and destroying the interstate trade and commerce of such manufacturers, by means of intimidation of and threats made to such manufacturers and their customers in the several States, of boycotting them, their product and their customers, using therefor all the powerful means at their command as aforesaid, until such time as, from the damage and loss of business resulting therefrom, the said manufacturers should yield to the said demand to unionize their factories."

That the conspiracy or combination was so far progressed that out of eighty-two manufacturers of this country engaged in the production of fur hats seventy had accepted the terms and acceded to the demand that the shop should be conducted in accordance, so far as conditions of employment were concerned, with the will of the American Federation of Labor; that the local union demanded of plaintiffs that they should unionize their shop under peril of being boycotted by this combination, which demand defendants declined to comply with; that thereupon the American Federation of Labor, acting through its official organ and through its organizers, declared a boycott.

The complaint then thus continued:

"20. On or about July 25, 1902, the defendants individually and collectively, and as members of said combinations and associations, and with other persons whose names are unknown to the plaintiffs, associated with them, in pursuance of the general scheme and purpose aforesaid, to force all manufacturers of fur hats, and particularly the plaintiffs, to so unionize their factories, wantonly, wrongfully, maliciously, unlawfully and in violation of the provisions of the 'Act of Congress, approved July 2, 1890,' and entitled 'An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies,' and with intent to injure the property and business of the plaintiffs by means of acts done which are forbidden and declared to be unlawful, by said act of Congress, entered into a combination and conspiracy to restrain the plaintiffs and their customers in States other than Connecticut, in carrying on said trade and commerce among the several States and to wholly prevent them from engaging in and carrying on said trade and commerce between them and to prevent the plain-

tiffs from selling their hats to wholesale dealers and purchasers in said States other than Connecticut, and to prevent said dealers and customers in said other States from buying the same, and to prevent the plaintiffs from obtaining orders for their hats from such customers, and filling the same, and shipping said hats to said customers in said States as aforesaid, and thereby injure the plaintiffs in their property and business and to render unsalable the product and output of their said factory, so the subject of interstate commerce, in whosoever's hands the same might be or come, through said interstate trade and commerce, and to employ as means to carry out said combination and conspiracy and the purposes thereof, and accomplish the same, the following measures and acts, viz.:

"To cause, by means of threats and coercion, and without warning or information to the plaintiffs, the concerted and simultaneous withdrawal of all the makers and finishers of hats then working for them, who were not members of their said combination, The United Hatters of North America, as well as those who were such members, and thereby cripple the operation of the plaintiffs' factory, and prevent the plaintiffs from filling a large number of orders then on hand, from such wholesale dealers in States other than Connecticut, which they had engaged to fill and were then in the act of filling, as was well known to the defendants; in connection therewith to declare a boycott against all hats made for sale and sold and delivered, or to be so sold or delivered, by the plaintiffs to said wholesale dealers in States other than Connecticut, and to actively boycott the same and the business of those who should deal in them, and thereby prevent the sale of the same by those in whose hands they might be or come through said interstate trade in said several States; to procure and cause others of said combinations united with them in said American Federation of Labor in like manner to declare a boycott against and to actively boycott the same and the business of such wholesale dealers as should buy or sell them, and of those who should purchase them from such wholesale dealers; to intimidate such wholesale dealers from purchasing or dealing in the hats of the plaintiffs by informing them that the American Federation of Labor had declared a boycott against the product of the plaintiffs and against any dealer who should handle it, and that the same was to be actively pressed against them, and by distributing circulars containing notices that such dealers and their customers were to be boycotted; to threaten with a boycott those customers who should buy any goods whatever, even though union made, of such boycotted dealers, and at the same time to notify such wholesale dealers that they were at liberty to deal in the hats of any other non-union manufacturer of similar quality to those made by the plaintiffs, but must not deal in the hats made by the plaintiffs under threats of such boycotting; to falsely represent to said wholesale dealers and their customers that the plaintiffs had discriminated against the union men in their employ, had thrown them out of employment because they refused to give up their union cards and teach boys, who were intended to take their places after seven months' instruction, and had driven their employees to extreme measures 'by their persistent, unfair and un-American policy of antagonizing union labor, forcing wages to a starvation scale, and giving boys and cheap, unskilled foreign labor preference over experienced and capable union workmen,' in order to intimidate said dealers from purchasing said hats by reason of the prejudice thereby created against the plaintiffs and the hats made by them among those who might otherwise purchase them; to use the said union label of said The United Hatters of North America as an instrument to aid them in carrying out said conspiracy and combination against the plaintiffs' and their customers' intertrade

aforesaid, and in connection with the boycotting above mentioned, for the purpose of describing and identifying the hats of the plaintiffs and singling them out to be so boycotted; to employ a large number of agents to visit said wholesale dealers and their customers, at their several places of business, and threaten them with loss of business if they should buy or handle the hats of the plaintiffs, and thereby prevent them from buying said hats, and in connection therewith to cause said dealers to be waited upon by committees representing large combinations of persons in their several localities to make similar threats to them; to use the daily press in the localities where such wholesale dealers reside, and do business, to announce and advertise the said boycotts against the hats of the plaintiffs and said wholesale dealers, and thereby make the same more effective and oppressive, and to use the columns of their said paper, The Journal of the United Hatters of North America, for that purpose, and to describe the acts of their said agents in prosecuting the same."

The question is whether upon the facts therein averred and admitted by the demurrer this action can be maintained under the Anti-trust Act.

The first, second, and seventh sections of that act are as follows:

1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any Circuit Court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

In our opinion, the combination described in the declaration is a combination "in restraint of trade or commerce among the several States," in the sense in which those words are used in the act, and the action can be maintained accordingly.

And that conclusion rests on many judgments of this court, to the effect that the act prohibits any combination whatever to secure action which essentially obstructs the free flow of commerce between the States, or restricts, in that regard, the liberty of a trader to engage in business.

The combination charged falls within the class of restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of trade except on conditions that the combination imposes; and there is no doubt that (to quote from the well-known work of Chief Justice Erle on Trade Unions) "at common law every person has individually, and the public also has collectively, a right to require that the course of trade should be kept free from unreasonable obstruction." But the objection here is to the jurisdiction, because, even conceding that the declaration states a case good at common law, it is contended that it does not state one within the statute. Thus, it is said, that the restraint alleged would operate to entirely destroy defendants' business and thereby include intrastate trade as

well; that physical obstruction is not alleged as contemplated; and that defendants are not themselves engaged in interstate trade.

We think none of these objections are tenable, and that they are disposed of by previous decisions of this court.[1]

. . . . . .

The averments here are that there was an existing interstate traffic between plaintiffs and citizens of other States, and that for the direct purpose of destroying such interstate traffic defendants combined not merely to prevent plaintiffs from manufacturing articles then and there intended for transportation beyond the State, but also to prevent the vendees from reselling the hats which they had imported from Connecticut, or from further negotiating with plaintiffs for the purchase and intertransportation of such hats from Connecticut to the various places of destination. So that, although some of the means whereby the interstate traffic was to be destroyed were acts within a State, and some of them were in themselves as a part of their obvious purpose and effect beyond the scope of Federal authority, still, as we have seen, the acts must be considered as a whole, and the plan is open to condemnation, notwithstanding a negligible amount of intrastate business might be affected in carrying it out. If the purposes of the combination were, as alleged, to prevent any interstate transportation at all, the fact that the means operated at one end before physical transportation commenced and at the other end after the physical transportation ended was immaterial.

Nor can the act in question be held inapplicable because defendants were not themselves engaged in interstate commerce. The act made no distinction between classes. It provided that "every" contract, combination, or conspiracy in restraint of trade was illegal. The records of Congress show that several efforts were made to exempt by legislation organizations of farmers and laborers from the operation of the act and that all these efforts failed, so that the act remained as we have it before us.

. . . . . .

. . . In the light of the authorities the only inquiry is as to the sufficiency of the averments of fact. It appears [from the declaration] that it is charged that defendants formed a combination to directly restrain plaintiffs' trade; that the trade to be restrained was interstate; that certain means to attain such restraint were contrived to be used and employed to that end; that those means were so used and employed by defendants, and that thereby they injured plaintiffs' property and business.

. . . . . .

And then followed the averments that the defendants proceeded to carry out their combination to restrain and destroy interstate trade and commerce between plaintiffs and their customers in other States by employing the identical means contrived for that purpose; and that by reason of those acts plaintiffs were damaged in their business and property in some $80,000.

We think a case within the statute was set up and that the demurrer should have been overruled.

Judgment reversed.

---

[1] United States v. Trans-Missouri Freight Association, 166 U. S. 290; United States v. Joint Traffic Association, 171 U. S. 505; and Northern Securities Company v. United States, 193 U. S. 197, hold in effect that the Anti-trust law has a broader application than the prohibition of restraints of trade unlawful at common law. Thus in the Trans-Missouri case it was said that "assuming that agreements of this nature are not void at common law, and that the various cases cited by the learned courts below show it, the answer to the statement of their validity is to be found in the terms of the statute under consideration;" and in the Northern Securities case that "the act declares illegal every contract, combination or conspiracy in whatever form, of whatever nature, and whoever may be the parties to it, which directly or necessarily operates in restraint of trade or commerce among the several States."

IV. Unconstitutionality of Law Forbidding Discharge of Employee because of Membership in Labor Organization.

The Supreme Court of the United States on January 27, 1908, rendered a decision in the case of Adair v. United States, 28 Sup. Ct. 277, declaring that the provisions of the act of Congress of June 1, 1898, making it a crime against the United States to unjustly discriminate against an employee of an interstate carrier because of his being a member of a labor organization was unconstitutional, being repugnant to the Fifth Amendment of the Constitution declaring that no person shall be deprived of liberty or property without due process of law.

The decision was not unanimous, Justices McKenna and Holmes dissenting, while Justice Moody did not participate in the decision. Justice McKenna was of the opinion that public policy might warrant restriction of liberty of contract to the limited extent involved in the law, in the interest of industrial peace in interstate commerce, which was the intent of the law. Justice Harlan delivered the opinion of the Court and said:

This case involves the constitutionality of certain provisions of the act of Congress of June 1st, 1898, 30 Stat. 424, c. 370, concerning carriers engaged in interstate commerce and their employees.

By the first section of the act it is provided: "That the provisions of this act shall apply to any common carrier or carriers and their officers, agents, and employees, except masters of vessels and seamen, as defined in section 4612, Revised Statutes of the United States, engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or, from any place in the United States through a foreign country to any other place in the United States. The term 'railroad' as used in this act shall include all bridges and ferries used or operated in connection with any railroad and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement or lease; and the term 'transportation' shall include all instrumentalities of shipment or carriage. The term 'employees' as used in this act shall include all persons actually engaged in any capacity in train operation or train service of any description, and notwithstanding that the cars upon or in which they are employed may be held and operated by the carrier under lease or other contract: Provided, however, That this act shall not be held to apply to employees of street railroads and shall apply only to employees engaged in railroad train service. In every such case the carrier shall be responsible for the acts and defaults of such employees in the same manner and to the same extent as if said cars were owned by it and said employees directly employed by it, and any provisions to the contrary of any such lease or other contract shall be binding only as between the parties thereto and shall not affect the obligations of said carrier either to the public or to the private parties concerned."

. . . . . .

The tenth section, upon which the present prosecution is based, is in these words:

That any employer subject to the provisions of this act and any officer, agent, or receiver of such employer, who shall require any employee, or any person seeking employment, as a condition of such employment, to enter into an agreement, either written or verbal, not to become or

remain a member of any labor corporation, association, or organization; *or shall threaten any employee with loss of employment, or shall unjustly discriminate against any employee because of his membership in such a labor corporation, association, or organization;* or who shall require any employee or any person seeking employment, as a condition of such employment, to enter into a contract whereby such employee or applicant for employment shall agree to contribute to any fund for charitable, social, or beneficial purposes; to release such employer from legal liability for any personal injury by reason of any benefit received from such fund beyond the proportion of the benefit arising from the employer's contribution to such fund; or who shall, after having discharged an employee, attempt to conspire to prevent such employee from obtaining employment, or who shall, after the quitting of an employee, attempt or conspire to prevent such employee from obtaining employment, is hereby declared to be guilty of a misdemeanor, and, upon conviction thereof in any court of the United States of competent jurisdiction in the district in which such offence was committed, shall be punished for each offence by a fine of not less than one hundred dollars and not more than one thousand dollars.

It may be observed in passing that while that section makes it a crime against the United States to unjustly discriminate against an employee of an interstate carrier because of his being a member of a labor organization, it does not make it a crime to unjustly discriminate against an employee of the carrier because of his *not* being a member of such an organization.

The present indictment was in the District Court of the United States for the Eastern District of Kentucky against the defendant Adair.

The first count alleged "that at and before the time hereinafter named the Louisville and Nashville Railroad Company is and was a railroad corporation, duly organized and existing by law, and a common carrier engaged in the transportation of passengers and property wholly by steam railroad for a continuous carriage and shipment from one State of the United States to another State of the United States of America, that is to say, from the State of Kentucky into the States of Ohio, Indiana, and Tennessee, and from the State of Ohio into the State of Kentucky, and was at all times aforesaid and at the time of the commission of the offence hereinafter named, a common carrier of interstate commerce, and an employer, subject to the provisions of a certain act of Congress of the United States of America, entitled, 'An Act concerning carriers engaged in interstate commerce and their employees,' approved June 1, 1898, and said corporation was not at any time a street railroad corporation. That before and at the time of the commission of the offence hereinafter named one William Adair was an agent and employee of said common carrier and employer, and was at all said times master mechanic of said common carrier and employer in the district aforesaid, and before and at the time hereinafter stated one O. B. Coppage was an employee of said common carrier and employer in the district aforesaid, and as such employee was at all times hereinafter named actually engaged in the capacity of locomotive fireman in train operation and train service for said common carrier and employer in the transportation of passengers and property aforesaid, and was an employee of said common carrier and employer actually engaged in said railroad transportation and train service aforesaid, to whom the provisions of said act applied, and at the time of the commission of the offence hereinafter named said O. B. Coppage was a member of a certain labor organization, known as the Order of Locomotive Firemen, as he the said William Adair then and there well knew, a more particular description of said organization and the members thereof is to the grand jurors unknown."

The specific charge in that count was "that said William Adair, agent and employee of said common carrier and employer as aforesaid, in the district aforesaid, on and before the fifteenth day of

October, 1906, did unlawfully and unjustly discriminate against said O. B. Coppage, employee as aforesaid, by then and there discharging said O. B. Coppage from such employment of said common carrier and employer, *because of his membership in said labor organization, and thereby did unjustly discriminate against an employee of a common carrier and employer engaged in interstate commerce because of his membership in a labor organization,* contrary to the forms of the statute in such cases made and provided, and against the peace and dignity of the United States."

The second count repeated the general allegations of the first count as to the character of the business of the Louisville and Nashville Railroad Company and the relations between that corporation and Adair and Coppage. It charged "that said William Adair, in the district aforesaid and within the jurisdiction of this court, agent and employee of said common carrier and employer aforesaid, on and before the fifteenth day of October, 1906, did unlawfully *threaten said O. B. Coppage, employee as aforesaid, with loss of employment, because of his membership in said labor organization,* contrary to the forms of the statute in such cases made and provided, and against the peace and dignity of the United States."

The accused Adair demurred to the indictment as insufficient in law, but the demurrer was overruled. After reviewing the authorities, in an elaborate opinion, the court held the tenth section of the act of Congress to be constitutional. 152 Fed. 737.[1]

The defendant pleaded not guilty, and after trial a verdict was returned of guilty on the first count and a judgment rendered that he pay to the United States a fine of $100. We shall, therefore, say nothing as to the second count of the indictment.

It thus appears that the criminal offence charged in the count of the indictment upon which the defendant was convicted was, in substance and effect, that being an agent of a railroad company engaged in interstate commerce and subject to the provisions of the above act of June 1, 1898, he discharged one Coppage from its service *because of his membership in a labor organization* — no other ground for such discharge being alleged.

May Congress make it a criminal offence against the United States — as by the tenth section of the Act of 1898 it does — for an agent or officer of an interstate carrier, having full authority in the premises from the carrier, to discharge an employee from service simply because of his membership in a labor organization?

This question is admittedly one of importance, and has been examined with care and deliberation. And the court has reached a conclusion which, in its judgment, is consistent with both the words and spirit of the Constitution and is sustained as well by sound reason.

The first inquiry is whether the part of the tenth section of the Act of 1898 upon which the first count of the indictment was based is repugnant to the Fifth Amendment of the Constitution declaring that no person shall be deprived of liberty or property without due process of law. In our opinion that section, in the particular mentioned, is an invasion of the personal liberty, as well as of the right of property guaranteed by that Amendment. Such liberty and right embraced the right to make contracts for the purchase of the labor of others and equally the right to make contracts for the sale of one's own labor; each right, however, being subject to the fundamental condition that no contract, whatever its subject-matter, can be sustained which the law, upon reasonable grounds, forbids as inconsistent with the public interests or as hurtful to the public order or as detrimental to the common good. This court has said that "in every well-ordered society, charged with the duty of conserving the safety of its members, the

[1] Reviewed by this Bureau in Labor Bulletin No. 54, November, 1907, p. 186.

rights of the individual in respect of his liberty may, at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand." Jacobson v. Massachusetts, 197 U. S. 11, 29, and authorities there cited. Without stopping to consider what would have been the rights of the railroad company under the Fifth Amendment, had it been indicted under the act of Congress, it is sufficient in this case to say that as agent of the railroad company and as such responsible for the conduct of the business of one of its departments, it was the defendant Adair's right — and that right inhered in his personal liberty, and was also a right of property — to serve his employer as best he could, so long as he did nothing that was reasonably forbidden by law as injurious to the public interests. It was the right of the defendant to prescribe the terms upon which the services of Coppage would be accepted, and it was the right of Coppage to become or not, as he chose, an employee of the railroad company upon the terms offered to him. Mr. Cooley, in his treatise on Torts, p. 278, well says: "It is a part of every man's civil rights that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rests upon reason, or is the result of whim, caprice, prejudice, or malice. With his reasons neither the public nor third persons have any legal concern. It is also his right to have business relations with any one with whom he can make contracts, and if he is wrongfully deprived of this right by others, he is entitled to redress."

In Lochner v. New York, 198 U. S. 45, 53, 56, which involved the validity of a State enactment prescribing certain maximum hours for labor in bakeries, and which made it a misdemeanor for an employer to require or permit an employee in such an establishment to work in excess of a given number of hours each day, the court said: "The general right to make a contract in relation to his business is part of the liberty of the individual protected by the Fourteenth Amendment of the Federal Constitution. Allgeyer v. Louisiana, 165 U. S. 578. Under that provision no State can deprive any person of life, liberty, or property without due process of law. The right to purchase or to sell labor is part of the liberty protected by this amendment, unless there are circumstances which exclude the right. There are, however, certain powers, existing in the sovereignty of each State in the Union, somewhat vaguely termed police powers, the exact description and limitation of which have not been attempted by the courts. Those powers, broadly stated and without, at present, any attempt at a more specific limitation, relate to the safety, health, morals, and general welfare of the public. Both property and liberty are held on such reasonable conditions as may be imposed by the governing power of the State in the exercise of those powers, and with such conditions the Fourteenth Amendment was not designed to interfere. Mugler v. Kansas, 123 U. S. 623; *In re* Kemmler, 136 U. S. 436; Crowley v. Christensen, 137 U. S. 86; *In re* Converse, 137 U. S. 624." . . . "In every case that comes before this court, therefore, where legislation of this character is concerned and where the protection of the Federal Constitution is sought, the question necessarily arises: Is this a fair, reasonable and appropriate exercise of the police power of the State, or is it an unreasonable, unnecessary and arbitrary interference with the right of the individual to his personal liberty or to enter into those contracts in relation to labor which may seem to him appropriate or necessary for the support of himself and his family? Of course the liberty of contract relating to labor includes both parties to it. The one has as much right to purchase as the other to sell labor." Although there was a difference of opinion in that case among the members of the court as to certain propositions, there was no disagreement as to the general proposition that there

is a liberty of contract which cannot be unreasonably interfered with by legislation. The minority were of opinion that the business referred to in the New York statute was such as to require regulation, and that as the statute was not shown plainly and palpably to have imposed an unreasonable restraint upon freedom of contract, it should be regarded by the courts as a valid exercise of the State's power to care for the health and safety of its people.

While, as already suggested, the rights of liberty and property guaranteed by the Constitution against deprivation without due process of law is subject to such reasonable restraints as the common good or the general welfare may require, it is not within the functions of government — at least in the absence of contract between the parties — to compel any person in the course of his business and against his will to accept or retain the personal services of another, or to compel any person, against his will, to perform personal services for another. The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. So the right of the employee to quit the service of the employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employee. It was the legal right of the defendant Adair — however unwise such a course might have been — to discharge Coppage because of his being a member of a labor organization, as it was the legal right of Coppage, if he saw fit to do so — however unwise such a course on his part might have been — to quit the service in which he was engaged, because the defendant employed some persons who were not members of a labor organization. In all such particulars the employer and the employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land. These views find support in adjudged cases, some of which are cited in the margin.[1] Of course, if the parties by contract fix the period of service, and prescribe the conditions upon which the contract may be terminated, such contract would control the rights of the parties as between themselves, and for any violation of those provisions the party wronged would have his appropriate civil action. And it may be — but upon that point we express no opinion — that in the case of a labor contract between an employer engaged in interstate commerce and his employee, Congress could make it a crime for either party without sufficient or just excuse or notice to disregard the terms of such contract or to refuse to perform it. In the absence, however, of a valid contract between the parties controlling their conduct towards each other and fixing a period of service, it cannot be, we repeat, that an employer is under any legal obligation, against his will, to retain an employee in his personal service any more than an employee can be compelled, against his will, to remain in the personal service of another. So far as this record discloses the facts the defendant, who seemed to have authority in the premises, did not agree to keep Coppage in service for any particular time, nor did Coppage agree to remain in such service a moment longer than he chose. The latter was at liberty to quit the service without assigning any reason for his leaving. And the defendant was at liberty, in his discretion, to discharge Coppage from service without giving any reason for so doing.

As the relations and the conduct of

[1] People v. Marcus, 185 N. Y. 257; National Protection Asso. v. Cummings, 170 N. Y. 315; Jacobs v. Cohen, 183 N. Y. 207; State v. Julow, 129 Mo. 163; State v. Goodwill, 33 W. Va. 179; Gillespie v. People, 188 Ill. 176; State v. Kreutzberg, 114 Wis. 530; Wallace v. Georgia, C. & N. Ry. Co., 94 Georgia, 732; Hundley v. L. & N. R.R. Co., 105 Ky. 162; Brewster v. Miller's Sons & Co., 101 Ky. 358; N. Y. &c. R.R. Co. v. Schaffer, 65 Ohio, 414; Arthur v. Oakes, 63 Fed. Rep. 310.

the parties towards each other were not controlled by any contract other than a general employment on one side to accept the services of the employee and a general agreement on the other side to render services to the employer — no term being fixed for the continuance of the employment — Congress could not, consistently with the Fifth Amendment, make it a crime against the United States to discharge the employee because of his being a member of a labor organization.

But it is suggested that the authority to make it a crime for an agent or officer of an interstate carrier, having authority in the premises from his principal, to discharge an employee from service to such carrier, simply because of his membership in a labor organization, can be referred to the power of Congress to regulate interstate commerce, without regard to any question of personal liberty or right of property arising under the Fifth Amendment. This suggestion can have no bearing in the present discussion unless the statute, in the particular just stated, is within the meaning of the Constitution a regulation of commerce among the States. If it be not, then clearly the Government cannot invoke the commerce clause of the Constitution as sustaining the indictment against Adair.

Let us inquire what is commerce, the power to regulate which is given to Congress?

This question has been frequently propounded in this court, and the answer has been — and no more specific answer could well have been given — that commerce among the several States comprehends traffic, intercourse, trade, navigation, communication, the transit of persons and the transmission of messages by telegraph — indeed, every species of commercial intercourse among the several States, but not to that commerce "completely internal, which is carried on between man and man, in a State, or between different parts of the same State, and which does not extend to or affect other States." The power to regulate interstate commerce is the power to prescribe rules by which such commerce must be governed.[1] Of course, as has been often said, Congress has a large discretion in the selection or choice of the means to be employed in the regulation of interstate commerce, and such discretion is not to be interfered with except where that which is done is in plain violation of the Constitution. Northern Securities Co. v. United States, 193 U. S. 197, and authorities there cited. In this connection we may refer to Johnson v. Railroad, 196 U. S. 1, relied on in argument, which case arose under the act of Congress of March 2, 1893, 27 Stat. 531, c. 196. That act required carriers engaged in interstate commerce to equip their cars used in such commerce with automatic couplers and continuous brakes, and their locomotives with driving-wheel brakes. But the act upon its face showed that its object was to promote the safety of employees and travelers upon railroads; and this court sustained its validity upon the ground that it manifestly had reference to interstate commerce and was calculated to subserve the interests of such commerce by affording protection to employees and travelers. It was held that there was a substantial connection between the object sought to be attained by the act and the means provided to accomplish that object. So, in regard to Howard v. Illinois Central Railroad Co., decided at the present term. In that case the court sustained the authority of Congress, under its power to regulate interstate commerce, to prescribe the rule of liability, as between interstate carriers and its employees in such interstate commerce, in cases of personal injuries received by employees while actually en-

[1] Gibbons v. Ogden, 9 Wheat. 1; Passenger Cases, 7 How. 283; Almy v. State of California, 24 How. 169; Pensacola Tel. Co. v. Western Union Tel. Co., 96 U. S. 1, 9, 12; County of Mobile v. Kimball, 102 U. S. 691; Western Union Tel. Co. v. Pendleton, 122 U. S. 347, 356; Lottery Case, 188 U. S. 321, 352; Northern Securities Co. v. United States, 193 U. S. 197; Howard v. Ill. Central R.R. Co., present term.

gaged in such commerce. The decision on this point was placed on the ground that a rule of that character would have direct reference to the conduct of interstate commerce, and would, therefore, be within the competency of Congress to establish for commerce among the States, but not as to commerce completely internal to a State. Manifestly, any rule prescribed for the conduct of interstate commerce, in order to be within the competency of Congress under its power to regulate commerce among the States, must have some real or substantial relation to or connection with the commerce regulated. But what possible legal or logical connection is there between an employee's membership in a labor organization and the carrying on of interstate commerce? Such relation to a labor organization cannot have, *in itself* and in the eye of the law, any bearing upon the commerce with which the employee is connected by his labor and services. Labor associations, we assume, are organized for the general purpose of improving or bettering the conditions and conserving the interests of its members as wage-earners — an object entirely legitimate and to be commended rather than condemned. But surely those associations as labor organizations have nothing to do with interstate commerce as such. One who engages in the service of an interstate carrier will, it must be assumed, faithfully perform his duty, whether he be a member or not a member of a labor organization. His fitness for the position in which he labors and his diligence in the discharge of his duties cannot in law or sound reason depend in any degree upon his being or not being a member of a labor organization. It cannot be assumed that this fitness is assured, or his diligence increased, by such membership, or that he is less fit or less diligent because of his not being a member of such an organization. It is the employee as a man and not as a member of a labor organization who labors in the service of an interstate carrier. Will it be said that the provision in question had its origin in the apprehension, on the part of Congress, that if it did not show more consideration for members of labor organizations than for wage-earners who were not members of such organizations, or if it did not insert in the statute some such provision as the one here in question, members of labor organizations would, by illegal or violent measures, interrupt or impair the freedom of commerce among the States? We will not indulge in any such conjectures, nor make them, in whole or in part, the basis of our decision. We could not do so consistently with the respect due to a co-ordinate department of the Government. We could not do so without imputing to Congress the purpose to accord to one class of wage-earners privileges withheld from another class of wage-earners engaged, it may be, in the same kind of labor and serving the same employer. Nor will we assume, in our consideration of this case, that members of labor organizations will, in any considerable numbers, resort to illegal methods for accomplishing any particular object they have in view.

Looking alone at the words of the statute for the purpose of ascertaining its scope and effect, and of determining its validity, we hold that there is no such connection between interstate commerce and membership in a labor organization as to authorize Congress to make it a crime against the United States for an agent of an interstate carrier to discharge an employee because of such membership on his part. If such a power exists in Congress it is difficult to perceive why it might not, by absolute regulation, require interstate carriers, under penalties, to employ in the conduct of its interstate business *only* members of labor organizations, or *only* those who are *not* members of such organizations — a power which could not be recognized as existing under the Constitution of the United States. No such rule of criminal liability as that to which we have referred can be regarded as, in any just sense, a regulation of interstate commerce. We need scarcely

repeat what this court has more than once said, that the power to regulate interstate commerce, great and paramount as that power is, cannot be exerted in violation of any fundamental right secured by other provisions of the Constitution. Gibbons v. Ogden, 9 Wheat. 1, 196; Lottery Case, 188 U. S. 321, 353.

It results, on the whole case, that the provision of the statute under which the defendant was convicted must be held to be repugnant to the Fifth Amendment and as not embraced by nor within the power of Congress to regulate interstate commerce, but under the guise of regulating interstate commerce and as applied to this case it arbitrarily sanctions an illegal invasion of the personal liberty as well as the right of property of the defendant Adair.

We add that since the part of the act of 1898 upon which the first count of the indictment is based, and upon which alone the defendant was convicted, is severable from its other parts, and as what has been said is sufficient to dispose of the present case, we are not called upon to consider other and independent provisions of the act, such, for instance, as the provisions relating to arbitration. This decision is therefore restricted to the question of the validity of the particular provision in the act of Congress making it a crime against the United States for an agent or officer of an interstate carrier to discharge an employee from its service because of his being a member of a labor organization.

The judgment must be reversed, with directions to set aside the verdict and judgment of conviction, sustain the demurrer to the indictment, and dismiss the case.

V. Strike against Open Shop Unlawful Because of Certain Rules Governing the Union whose Members were on Strike.

The Supreme Judicial Court of Massachusetts, on April 2, in a majority opinion, handed down a decision in the case of Edward T. Reynolds and other concerns in the Lynn building trades against George H. E. Davis, business agent of the Lynn Building Trades Council, comprising various local labor unions, holding that a strike against the open shop is unlawful because of certain rules and by-laws of the council, or in other words that the legality of a strike depends upon its purpose.

The strike took place in May, 1906, after the employers had posted open shop notices. The Court condemned the working and trade rule of the Lynn Building Trades Council, with which the defendant unions were affiliated, that grievances of a member of a union against his employer are to be investigated by the executive board of the Council and if the employer does not comply with the decision of the executive board he is to be reported to the Council as "unfair," and if he continues his refusal the board "shall at once remove all union men" from his employ and "no union man shall be allowed to go to work for him until he is again placed on the fair list" by the Council.

This rule was held invalid, and a strike to enforce it an illegal combination which an injunction will be granted to stop. Where employees are under contract with their employer, the Court declared the rule was an attempt to force the employer to submit to a delegate body of employees his rights under the contract, and a combination for that purpose is unjustifiable interference with the employer's business. And where there is no contract existing between the employees and the employer, the enforcement of that rule against the employer by a strike was held to be unjustifiable and illegal because in the nature of a sympathetic strike in the interest of an individual employee with a grievance and not in the common interests of the strikers.

Chief Justice Knowlton dissented from the opinion of the majority of the Court so far as it rested on the rule and by-laws of the union. He did not think the act should be condemned because of the rules which govern the union, under which every grievance is to be investigated by the executive board of the Council. He regarded the procedure provided by the rules and by-laws as right and proper, and held that the course of proceeding is entirely for the guidance of the members of the union. The employer takes such measures and acts on such principles as he chooses for his own guidance.

Justice Loring delivered the opinion of the Court:

This is a bill brought apparently by the members of nine firms and 35 individuals, and purports to be brought against seven unincorporated associations (a Building Trades Council and six local trade unions) and 28 individuals. The relief sought is an injunction restraining the defendants from interfering with the business respectively carried on by the several plaintiffs. The place of business of each of the plaintiffs and defendants is in the city of Lynn.

The case was sent to a master and came on for hearing in the Superior Court on the master's report to which no exceptions had been taken. A final decree was entered directing that the bill be dismissed as to three of the plaintiffs named on a motion to that effect made by them, and as to one defendant on the merits, and restraining the remaining defendants in certain particulars therein set forth. From this decree the defendants who were enjoined took an appeal which is now before us.

The principal contention of the defendants is that on the facts set forth in the master's report the bill should have been dismissed.

It appears from the master's report that prior to May 1, 1906, "although some of them [the plaintiffs] had been running what was practically an 'open shop,' yet many of the complainants had at least some sort of verbal understanding, if not an actual agreement, with the various unions respecting hours, wages, apprentices, and the employment of non-union help, which would expire on that date."

At some time not fixed by the master the plaintiffs (with the exception of Keys, Eastman, and Swan), acting with others, signed and issued the following advertisement which was headed:

LYNN OPEN SHOPS.

The following firms propose in the future to do a free and unrestricted business under the following Open Shop Rules, which will enable us to pay our employees according to their merits, and insure to the public a fair and honest return for their money, which cannot be done under the Closed Shop.

OPEN SHOP RULES.

1. There shall be no discrimination for or against any workman on account of membership or non-membership in any organization.

2. There shall be no restriction as to the number of apprentices to be employed when of proper age, or as to the nature of the work which workmen of any class shall do.

3. That eight (8) hours shall constitute a day's work.

4. Overtime shall not be permitted except when absolutely necessary, and under no circumstances to be continued, all overtime to be paid for as regular time; Sundays and Legal Holidays, or the days on which same are celebrated, are to be paid for as double time.

5. Grievances arising among the workmen will be settled in conference between the employer and the workmen already involved.

This advertisement was signed by 29 master carpenters and builders, eight master painters and paperhangers, one machinist and millwright, six plumbers, steamfitters, and tinsmiths, four stairbuilders and dealers in building supplies, one dealer in lumber and "builders' finish," and three carrying on the business of "gas and electric construction."

The six trade unions named as defendants are unions of (1) carpenters, (2) lathers, (3) painters, decorators, and paperhangers, (4) plumbers, (5) sheet metal workers, and (6) steamfitters and helpers.

On May 1, 1906, these "Open Shop Rules" were posted by the plaintiffs in their several shops, and thereupon the union men members of the unions named as defendants left work with "some" exceptions; in these instances the union men "remained at work after the open shop rules were posted and until a non-union man was put at work on the same job with themselves, when they immediately left. In one or two cases the union men returned when the non-union men ceased working."

Without going into details it is manifest that the strike here in question was a strike against the open shop, as the plaintiffs proposed to carry on an open shop, and for the closed shop as it had previously been carried on by many of the plaintiffs and by the defendants.

It is settled in this Commonwealth that the legality of a combination not to work for an employer, that is to say, of a strike, depends (in case the strikers are not under contract to work for him) upon the purpose for which the combination is formed, — the purpose for which the employees strike.

We have excluded all cases where the employees are under contract to work for their employer because it is now settled in this Commonwealth at least, that competition and similar defences are not a justification for inducing an employee or other person to commit a breach of a contract and thereby interfering with the business of the employer. Beekman v. Marsters, 195 Mass. 205. From that it would seem to follow necessarily that, in case of persons under a contract to work, a strike or combination not to work, in violation of that contract, to secure something not due them under that contract, would be a combination interfering without justification with the employer's business. See in this connection Aberthaw Construction Co. v. Cameron, 194 Mass. 208.

Instances of strikes where the purpose sought to be obtained by the strike has been held to make the combination not to work an illegal one, are to be found in Carew v. Rutherford, 106 Mass. 1; Plant v. Woods, 176 Mass. 492; Pickett v. Walsh, 192 Mass. 572; Aberthaw Construction Co. v. Cameron, 194 Mass. 208.

What, then, on the facts found in the master's report was the purpose of the strike here in question?

The question of the purpose of the strike does not seem to have been directly in the master's mind in framing his report, and for that reason his findings of fact bearing on the point are not directed to this issue. But in our opinion the facts were abundantly proved which made the strike here in question an illegal combination, that is to say, an interference with the business which each plaintiff was conducting, for which interference there was not a justification.

The occasion of the strike, as we have said, was the posting of the open shop rules. The strike was manifestly a strike against working under those rules. To understand the significance of the defendants' combination not to work under these open shop rules, it is necessary to state what was proved to have been the condition under which many of the plaintiffs had been conducting their business, before these rules were posted. They had, as a rule, been conducting their business under a verbal understanding, if not an actual agreement, with the defendant local unions.

It appears that the defendant local unions were affiliated with the Building Trades Council of Lynn and vicinity, also named as a party defendant. The Building Trades Council of Lynn and vicinity appears to be an unincorporated association made up of delegates from the local unions with which it is "affiliated," including the six local unions named here as defendants.

By the working and trade rules of this Council every grievance which a member

of a local union affiliated with the Council has against his employer is to be investigated by the executive board of the Council, and if the employer does not comply with the decision of the executive board he is reported to the Council as "unfair," and upon being declared "unfair" by the Council, the executive board is "to again interview" the employer, and if the employer continues in his refusal to comply with the demands of the Council, the board "shall at once remove all union men" from his employ, and "no union man shall be allowed to go to work" for him until he is "again placed upon the fair list by the . . . Council."

In other words, the members of the defendant unions, by the terms of their own rules, undertook to decide each case of an individual grievance between a single employee and his employer, to decree what should be done by the employer as well as by the employee, and to enforce compliance with its decision by threatening and instituting a strike in which all members were bound to join. What we mean by an individual grievance is (for example) the discharge by his employer of a member of the union for drunkenness or inefficiency.

This statement of the makeup of the defendant unions and the Building Trades Council with which they are affiliated makes plain what the plaintiffs were aiming at in the open shop rules. And it also makes plain what was the main or one of the main purposes for which the strike in question was instituted by the individual defendants.

The strike in question was a combination for the purpose of making the Trades Council, composed of delegates from the unions of which the individual defendants are members, the arbiter of all questions between individual employees and their employers.

It purports to include questions arising under contracts still in existence between the two. To force the employer to submit to a delegate body of employees his rights under an existing contract by a combination for that purpose is not a justifiable interference with their employers' business.

And in cases arising outside existing contracts it is an attempt to force compliance on the part of employers within the decision of this delegate body of employees as to whether a single employee is or is not to work for the employer, which decision is to be enforced by a strike. Such a strike would be a strike in the nature of a sympathetic strike, that is to say, it is a strike not to forward the common interests of the strikers but to forward the interests of an individual employee in respect to a grievance between him and his employer where no contract of employment exists. We do not mean to say that a labor union can not combine to support a committee to take up individual grievances in behalf of the several members. What we now decide to be illegal is a combination that such grievances (that is to say, grievances between an individual member of a union and his employer which are not common to the union members as a class) shall be decided by the employees and that decision enforced by a strike on the part of all. In this respect this case comes within the principle upon which the second point in Pickett v. Walsh, 192 Mass. 572, was decided.

It follows that the plaintiffs were entitled to an injunction restraining the defendants from combining together to further the strike in question, and from doing any acts whatever, peaceful or otherwise, in furtherance thereof, including the payment of strike benefits and putting plaintiffs on a uniform list.

The Building Trades Council and the six unions were not properly joined as parties defendant as unincorporated associations, Pickett v. Walsh, 192 Mass. 572, and they should be stricken from the title of the cause. The pleader seems to have thought that the reason why all the members of these unincorporated associations need not be joined as defendants is because their names

"are to your complainants unknown," and he has undertaken to make them parties by an allegation "that John Doe and Richard Roe and sundry other persons whose names and whose several residences and places of business are to your complainants unknown, are the remaining members of said respondent unions and the respondent Building Trades Council, and are participants in the unlawful acts hereinafter set forth." The rule of equity pleading which dispenses with the joinder of all members of an unincorporated association, depends upon their being members of a class who have a common interest and are too numerous to be made individually parties defendant even if their names are known to the plaintiff. The proper way of bringing them before the court is to join as parties defendant persons who are alleged to be and are proper representatives of the class, describing the class to which the members belong. See Pickett v. Walsh, 192 Mass. 572.

No objection has been made to the joinder as parties plaintiff in this suit of the nine firms and 35 individuals, each carrying on a separate business.

It is manifest that the decree entered is not so sweeping as that to which the plaintiffs were entitled. No appeal, however, was taken by the plaintiffs, and of this the defendants did not complain.

But the bill must be amended as to the parties defendant. Upon the bill being amended within 60 days, the decree may be modified as hereinbefore set forth, and on being so modified, affirmed. Otherwise the entry must be bill dismissed. *So ordered.*

Reynolds et al. v. Davis et al., 84 N. E. 457.

VI. The Boycott Declared Unlawful.

The case of The Buck's Stove & Range Company v. American Federation of Labor, et al., 35 W. L. R. 797, before the Supreme Court of the District of Columbia, was decided on December 17, 1907, and an injunction *pendente lite* was granted the plaintiff. The questions involved are full of practical interest and importance, and in the following digest of the decision the opinion as rendered by Mr. Justice Gould is given rather at length.

The bill of complaint in this case was filed by the Buck's Stove & Range Company . . . of St. Louis [Missouri], against the American Federation of Labor, a voluntary association, having its headquarters in . . . [Washington, D. C.]; Samuel Gompers, individually, and as a member of, and the president and agent of, and as a member of the Executive Council of said Federation; Frank Morrison, individually, and as a member of and secretary and agent of said council; and nine others, individually, as the remaining members of said council. . . .

The bill states substantially as follows: That the plaintiff . . . has been carrying on the business of manufacturing stoves and ranges since 1846; that it has customers in all the Territories and nearly all the States of the Union, . . . nine-tenths of its product being sold outside the State of Missouri: . . . that . . . its factory . . . is divided into departments, as follows: molding, cleaning, mounting, steel-range mounting, nickel or polishing, enameling, and shipping departments; that the average number of workmen on its pay-roll is 750 a day, of whom 75 are in the nickel department, which is an essential branch in the manufacture of the completed product, which, if stopped, would bring the work of the factory to a standstill; that the plaintiff runs what is called "an open shop," employing both union and non-union men, without discrimination, and has several hundred union men working for it in harmonious and satisfactory relations; that the plaintiff is a member of a voluntary association of stove manufacturers, called the Stove Founders' National Defense Association, which association has an agreement with the Iron Molders' Union of North America,

which, generally stated, provides for a settlement of matters in controversy by arbitration, pending which neither party to the dispute shall discontinue business relations; that said association also has an agreement with the Metal Polishers, Buffers, Platers, Brass Molders, and Brass and Silver Workers' International Union of North America providing for the adjustment of all difficulties that may exist between the polishers and other members of said union and their employers. . . .

The bill thereupon proceeds to state, with great fullness, the organization and much of the history of the American Federation of Labor. . . .

The bill next avers that the defendant, the American Federation of Labor, edits and distributes monthly from Washington to its various subordinate associations, and its individual members, and to the public generally, a monthly journal, the *American Federationist,* in each and every copy of which there appears a notice that particular concerns, upon the application of particular unions named, and after due investigation and attempted settlement, have been declared "unfair" by the Executive Council and requesting the secretaries of all its 27,000 local unions to read such notice at the meetings of their unions, and requesting the labor and reform press of the country to copy it, which notice is signed by the said Gompers as president of the said Federation of Labor in behalf of it and all its members. . . .

The bill next sets out the existence of the organization of Metal Polishers, Buffers, Platers, Brass Molders, and Brass and Silver Workers' International Union of North America, which is affiliated with and is a component part of the American Federation of Labor. . . .

The bill further alleges that the defendants, their confederates and agents, to carry out their conspiracy to boycott and destroy the plaintiff's business and restrain the sale and shipment of its product to its customers in the various States and Territories of the Union, distributed among the customers of the plaintiff and the various subordinate unions of the American Federation of Labor a false and misleading circular in which it is stated that the metal polishers of Local No. 13 were compelled to strike because said plaintiff insisted on the said polishers returning from the nine-hour to the 10-hour workday, although in June, 1904, the members of the above-named union had secured the nine-hour workday, and also reciting an inability to agree on the part of the International Union and the Stove Founders' National Defense Association after several conferences; that in the month of December, 1906, the defendants, their confederates and agents, as a means of carrying out said conspiracy, distributed among the customers of the plaintiff, and the public generally, thousands of other false and misleading circulars to practically the same effect. . . .

The bill next avers that as a further step in carrying out said conspiracy to boycott and destroy the plaintiff's business, defendants, their confederates and agents, have notified plaintiff's customers to whom shipments of stoves have been made that it and its product had been declared "unfair" to organized labor, and have threatened them with loss of patronage and business if they continued to sell the product of plaintiff. . . .

The bill next recites the proceedings of the annual convention of the American Federation of Labor, at Minneapolis, in November, 1906. . . .

The bill further avers that the action of the defendants in so placing the name of the plaintiff upon the "We Don't Patronize" list of the American Federation of Labor, and boycotting its product as aforesaid, . . . is in direct violation of the agreement made and now existing between the said Iron Molders' Union and the Stove Founders' National Defense Association, including the plaintiff, one of its members, and of said agreement between the said International Metal Polishers' Union, one of the subordinate organizations of the American Federation of Labor, and the said Stove

Founders' Association, including the plaintiff, one of its members, and is for that reason a wrongful and unlawful act. . . .

The bill next recites the publication in the *Federationist* for May, 1907, of a special notice to all its affiliated unions over the signature of the defendant Gompers, as president of the American Federation of Labor, that the plaintiff had been declared "unfair" at the request of the Brotherhood of Foundry Employees after due investigation and attempt at settlement, with a request to all the secretaries of its 27,000 local unions to read the notice at the meetings of their unions, and with the further request to the labor and reform press of the whole country to copy such notice. . . .

The bill sets out specific instances in which commercial establishments which had for a long time been customers of the plaintiff under annual contracts have been coerced into ceasing to be such customers by subordinate organizations of the said Federation of Labor under threats of loss of patronage of the members of said union if they continued to handle plaintiff's goods. . . .

The bill next sets out certain publications in the *Journal*, the organ of the Metal Polishers' Union, over the signature of A. B. Grout, president of said International Metal Polishers' Union, stating that the plaintiff was on the "Unfair" list, and urging members of organized labor to continue the boycott against the plaintiff's product. . . .

All of the defendants joined into an answer to said bill. Subsequently, on October 28, 1907, the plaintiff filed its petition setting up that the defendants and their associates were continuing the wrongful acts set forth in the bill, the allegations of which were made a part of the said petition, and praying for an injunction *pendente lite*. Upon this petition a rule to show cause why such an injunction should not be issued was granted to which the defendants, on November 15, 1907, made return by filing an amended answer to the bill and by filing certain affidavits. With the petition the plaintiff filed a large number of affidavits, which have been printed and form a book of 312 pages. Without attempting to even summarize the contents of these affidavits (each of which I have carefully read), it may be stated that they fairly substantiate the allegations contained in the bill. From them I deduce the following:

Prior to January 1, 1906, out of 750 men in plaintiff's employ, 75 worked in the polishing department, being paid by the piece. Of these a majority were members of the Metal Polishers, Buffers, and Platers' Local Union No. 13 of St. Louis. Plaintiff's business was conducted on the principle of an "open shop" — that is, union and non-union men were employed without discrimination. The work was 10 hours in all departments, as it was with a majority of those engaged in the same line of business in St. Louis. It may be fairly inferred from the affidavits that prior to January 1, 1906, the metal polishers, being paid by the piece, had been accustomed to quit work before the expiration of the 10 hours, or when they had earned $4 for the day's work. On the date mentioned a notice was posted requiring the men in this department to work 10 hours. They continued to so work until August 29, 1906, when those who were members of the said local union struck, without previous notice to the plaintiff. At the date the local union was a member of the National Metal Polishers, Buffers, Platers, etc., Union, and the plaintiff was a member of the Stove Founders' National Defense Association, between which there was an agreement . . . which, according to its recitals, was entered into "with the view of promoting harmony" between the members of the respective bodies, and "adjusting any grievances that may arise by conciliation and arbitration." In this agreement is a provision that pending the adjudication of disputes "neither party shall discontinue operations, but shall

proceed with business in the ordinary manner." Shortly after the strike, Local Union No. 13 put plaintiff on the "Unfair" list, and on September 6, 1906, sent circulars to the local unions throughout the country affiliated with the International Polishers, etc., Union, in which it was requested that those receiving the circular would "appoint committees to visit dealers handling stoves and ranges of said firm and request them to cease handling said goods, also have them write the firm a letter to that effect." On November 6, 1906, the said local union also sent circulars to dealers handling plaintiff's products, calling attention to the "unfairness" of the firm and requesting them to cease handling such products. It also caused to be printed and circulated hand bills in the following, or similar language: "Notice! Unfair. The Buck Stove & Range Co., St. Louis, Missouri. Do not purchase of said firm. Strike endorsed by Metal Polishers' International Union." These hand bills were distributed to plaintiff's customers and in some instances posted upon the fronts of their stores.

The action of Local Union No. 13 in placing plaintiff upon the "Unfair" list was endorsed by the International Union of Metal Polishers, of which it was a constituent body, by the Central Trades and Labor Union of St. Louis and by the Metal Trades Council of St. Louis and vicinity. Notices and communications were also published in the *Journal*, the official organ of the International Metal Polishers, etc., Union, urging the prosecution of the boycott against the plaintiff.

The annual convention of the defendant, the American Federation of Labor, was held at Minneapolis, Minnesota, November 12–24, inclusive, 1906. . . . The president . . . appointed a Committee on Boycott, as provided by the constitution of said Federation, . . . [into which was] introduced the following resolution: "Whereas, The Buck Stove & Range Company, of St. Louis, Missouri, which is owned and controlled by J. W. Van Cleave, president of the Manufacturers' Association, has persistently discriminated against members of the Foundry Employees' Union to the extent of discharging every man as soon as it became known that he was a member of said union; therefore be it Resolved, That the products of the above-named foundry be placed on the 'We Don't Patronize' list of the American Federation of Labor," which was duly referred to said Committee on Boycott. A majority of the committee recommended its reference to the Executive Council in accordance with article 9, section 4, of the constitution. A minority recommended immediate action, for the reason, among others, that "the attitude of the president of the company towards organized labor is well known, he being the president of the Citizens' Industrial Alliance of St. Louis and first vice-president of their national association. At the present time the metal polishers, buffers, and platers are out on strike, and have been since August 29, to resist an increase of working hours from nine (which they had worked under for 18 months) to 10 a day. Mr. Van Cleave withdrew his patronage from a printing firm that had done his work for a year when it granted the eight-hour day to its employees, and issued a circular to all business men calling upon them to do the same. This leaves no doubt as to his attitude towards organized labor." President Gompers ruled the minority report to be in conflict with the constitution, and the majority report, amended by approving the report of the committee and instructing executive committee to take action at the earliest possible moment, was adopted. At a meeting of the Executive Council of the said Federation, held March 18–23, 1907, at Washington, D. C., that body gave its endorsement to the resolution declaring plaintiff "Unfair," and it was so published in the May number of the *American Federationist*, the official organ of the said Federation, in the following form:

SPECIAL NOTICE.

WASHINGTON, D. C., April 25, 1907.

TO ALL AFFILIATED UNIONS:

At the request of the unions interested, and after due investigation and attempt at settlement, the following concerns have been declared UNFAIR:

BUCK STOVE AND RANGE COMPANY, ST. LOUIS, MISSOURI.

Secretaries are requested to read this notice at union meetings, and Labor and Reform Press please copy.

Fraternally yours,

SAMUEL GOMPERS,

President, American Federation of Labor.

In the subsequent issues of said periodical the name of plaintiff appears on what is termed the "We Don't Patronize" list.

There is no evidence in the record that the Brotherhood of Foundry Employees or the Foundry Employees' Union, on whose behalf the resolution purports to have been introduced at the Minneapolis convention, had ever presented any grievance to said plaintiff, or, in fact, had had any controversy with it on any subject whatever. The general manager, superintendent, assistant superintendent, and foreman of the polishing department of plaintiff state under oath that they not only never discriminated against members of such union, but never knew the plaintiff had such members in its employ. Bechtold, who introduced the resolution, and who is secretary-treasurer of the International Brotherhood of Foundry Employees, made an affidavit for the defendants, in which he admits that no attempt to adjust any alleged trouble between his organization and plaintiff was made, and gives as a reason the "arbitrary, uncompromising and unfriendly attitude" of Mr. Van Cleave, the president of plaintiff, manifested at a conference held October 24, 1906, after the strike of the metal polishers, between himself and representatives of said International Metal Polishers, etc., Union and the Central Trades and Labor Union of St. Louis. In this connection it should be noted that under the practice of the American Federation of Labor, an international union was not allowed to have published the names of more than three firms on the "We Don't Patronize" list at one time, and that the International Metal Polishers, etc., Union had its quota full at the time of the strike of Local No. 13.

The effects upon the business of plaintiff of the action of Local Union No. 13, its circulars and publications, the endorsement of its action by the Central Trades and Labor Union of St. Louis and the International Metal Polishers, etc., Union, and the endorsement of its action by the defendants, and the publication thereof in the *Federationist* are specifically set forth in the affidavits filed with the petition for the rule. Time and space render it impracticable to even mention all the instances in which such action has resulted in the loss of customers to plaintiff. . . . In the case of the Strauss-Miller Company, of Cleveland, Ohio, set forth in paragraph 19 of the bill, the company abandoned its previous relations with the plaintiff under threat of a total loss of patronage of more than 60,000 persons, members of the United Trades and Labor Council, of Cuyahoga County, Ohio, which is one of the city central labor unions of the defendant, the American Federation of Labor. . . . Ovid B. Sailors, secretary and treasurer of a firm doing business in South Bend, Indiana, had been a customer of plaintiff for several years. He makes oath that on October 3, 1907, he was notified by a committee of No. 330, Metal Polishers' Local Union of South Bend, to discontinue the sale and advertising of plaintiff's stoves and ranges and that, thereafter, on October 18 his firm was published in the local labor papers, by means of a large display advertisement, as having been placed on the "Unfair" list, and that on the following day a circular appeared under the signature of Local Metal Polishers' Union No. 330, stating that "The outfitting house of Sailor Bros. has been placed on the 'Unfair' list on account of their continuing to handle the Buck stoves and ranges. . . . All members and friends of organized

labor are asked to read and heed the above." . . .

The defendant filed nine affidavits as part of their return of the rule. Defendant Gompers states that the word "unfair" has been in use almost from the organization of the American Federation of Labor; that it has never been used by labor organizations as imputing "any unfairness in general conduct, or in dishonesty," but that "it means simply that the person, firm, or company to whom the description is applied is inequitable and unjust to organized labor, or that he discriminates against organized labor, in some respect, or to some extent." Joseph F. Valentine . . . states that the executive council of the Federation of Labor referred to him the resolution introduced at the Minneapolis convention by the International Brotherhood of Foundry Employees, seeking the endorsement of the Federation of a "boycott" (sic) by said International Brotherhood of plaintiff; that he first tried to adjust the matter through the Stove Founders' National Defense Association, but found that the Foundry Employees' Union had no agreement with the Defense Association; that from his "knowledge of the men in the iron molding trade" and from his investigations he was fully convinced that any attempt at direct conference with the plaintiff would prove fruitless. E. G. Boyd, a metal polisher, makes oath as to the injurious effect of the trade of metal polishers upon the health; Arthur Moran makes a similar affidavit as to stove mounters and steel range workers, and that the conditions under which stove mounters are forced to work in the shop of plaintiff were such that no man could work more than nine hours and be in a condition to give his family the time and attention that is necessary, especially for the proper education of his children, which he as the head of the family is supposed to promote; that in most of the stove shops, in the St. Louis District, the stove mounters and steel range workers enjoy the nine-hour workday. Martin Schreiber makes oath that himself, and three others, who became members of the Stove Mounters and Steel Range Workers' Union on Friday evening, September 27, 1907, were discharged on September 30, 1907, the reason given by the foreman being that the warehouses were overstocked, and that he believes the reason was that he and the other men had become members of said union. . . . Arthur Moran makes a subsequent affidavit, dated November 11, 1907, in which he states that on or about September 4, 1907, he was employed by plaintiff as a stove mounter and was president of Local Union No. 86, and that on that date a committee from said union called upon J. W. Van Cleave, president of plaintiff, and presented a request that members of said union be required to work only nine hours a day; that Van Cleave asked affiant if he was president of said union, and being advised that he was, promptly discharged him; that said Van Cleave threatened to discharge all members of said committee and declined to deal with them.

There appear two general questions upon this record: First, *has the plaintiff shown the existence of an unlawful combination and conspiracy to destroy its business;* and, second, *does the testimony so connect the defendants, or any of them, with such combination and conspiracy as to make them amenable to the injunctive power of this court.*

Upon the first proposition there is little room for argument or discussion. . . . There is no attempt to deny that plaintiff's customers, even those under contract, have refused to continue business dealings with it under threat of being boycotted by the local organizations affiliated with the Federation. It does not become necessary in this case to discuss whether placing plaintiff's name on the "Unfair" list, or on the "We Don't Patronize" list in the *Federationist,* amounts to what is technically called a boycott, for the reason that the affidavits as to what has been actually done with reference to plaintiff's customers leave no doubt as to what has been in fact ac-

complished. A boycott is defined in . . . [the case of] Ry. v. Penn. Co., 54 Fed. 730 . . . [as] "a combination of many to cause a loss to one person by coercing others, against their will, to withdraw from him their beneficial business intercourse, through threats that, unless those others do so, the many will cause serious loss to them." This definition was given in March, 1893, and it was of such combinations that the same judge said in . . . Thomas v. Cincinnati, etc., Ry. Co., 62 Fed. 819: "Boycotts, though unaccompanied by violence or intimidation, have been pronounced unlawful in every State of the United States where the question has arisen, unless in Minnesota; and they are held to be unlawful in England." Since this statement was made, boycotts have been held unlawful in Minnesota. (Ertz v. Produce Exchange, 79 Minn. 140.) . . .

It is not surprising that there is so little difference of opinion among the courts upon the question involved. The conclusion reached is based upon an appreciation of the fundamental rights of free men in a free country. . . . Defendants have the right, either individually or collectively, to sell their labor to whom they please, on such terms as they please, and to decline to buy plaintiff's stoves; they have also the right to decline to traffic with dealers who handle plaintiff's stoves. But Sailor Bros., for instance, have an equal right to buy plaintiff's stoves and plaintiff has an equal right to sell said stoves to Sailor Bros., and when defendants and those associated with them combine to interfere with or obstruct, without justifiable cause, the freedom of buying and selling which should exist between plaintiff and Sailor Bros. they infringe upon the rights of both and do an unlawful act. The same principle which is the basis of their trade freedom is also the basis of the freedom of plaintiff and Sailor Bros. to deal with each other untrammelled by the interference of defendants. Such interference is an unlawful invasion upon the rights of plaintiff. Just what constitutes "justifiable cause" for interference . . . remains in some respects undetermined. Defendants claim the motive of wishing to better their condition affords such legal justification, but this motive is too remote, as compared with their immediate motive, which is to show what punishment and disaster necessarily follow a defiance of their demands. . . .

It is earnestly contended by defendants' counsel that as each one of the defendants has the right to refuse to patronize the customers of plaintiff unless such customers will discontinue handling plaintiff's stoves, therefore they may combine in their refusal; in other words, that there can not be an unlawful combination where each member thereof might do, individually, the thing contemplated, without responsibility to the law therefor. This contention has much of plausibility. It is undoubtedly difficult to formulate the legal basis of the proposition that what is lawful for one to do becomes unlawful when done in combination. It seems to evade accurate analysis. . . . Mr. Justice Harlan, in the case of Arthur v. Oakes, 25 L. R. A. 429, states: "It is one thing for a *simple*[1] individual or for several individuals each acting upon his own responsibility, and not in co-operation with others, to form the purpose of inflicting actual injury upon the property or rights of others. It is quite a different thing in the eye of the law for many persons to combine or conspire together with the intent not simply of asserting their rights or of accomplishing lawful ends by peaceable methods, but of employing their united energies to injure others or the public. An intent on the part of a single person to injure the rights of others or of the public is not in itself a wrong of which the law will take cognizance, unless some injurious act be done in execution of the unlawful intent. But a combination of two or more per-

[1] Word probably intended for single. — *Ed.*

sons with such an intent and under circumstances that give them when so combined a power to do an injury they would not possess as individuals acting jointly, has always been recognized as in itself wrongful and illegal." . . .

It was next contended on behalf of defendants that to restrain the publication of plaintiff's name on the "Unfair" or "We Don't Patronize" list would be an infringement on their constitutional rights and an assault upon the freedom of the press; or that if plaintiff had any redress for such publication it was by action for the libel, and that equity will not enjoin the publication of a libel. All this would have merit, if the act of defendants in making such publication stood alone, unconnected with other conduct both preceding and following it. But it is not an isolated fact; according to the allegations of the bill and the supporting affidavits it is an act in a conspiracy to destroy plaintiff's business, an act which has a definite meaning and instruction to those associated with defendants and an act which is the basis for conduct on the part of defendant's associates, which unlawfully interferes with plaintiff's right of freedom to trade with whom he pleases. The argument of counsel is fully answered by the language of Mr. Justice Holmes in the case of Aikens v. Wisconsin, 195 U. S. 194: "No conduct has such an absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected of acts or omissions may be made a step in a criminal plot, and if it is a step in a plot, neither its innocence nor the constitution is sufficient to prevent the punishment of the plot by law."

It is asserted in the answer of defendants, and urged in the argument, that the defendant, the American Federation of Labor, is a federation of organizations and has no individual membership. It would be difficult to understand how the different organizations, made up of individual members, and existing only by reason of such individual membership, could be federated into a central organization without such individual members becoming also members of such central organization; especially would this be difficult in a court of equity which looks through the forms to reach the substance. But if this could be accomplished as a legal or equitable fact, the testimony shows conclusively that the defendant has not done so. On page 177, of the printed affidavits, is given a fac-simile from the report of the proceedings of the convention of the Federation, 1904, showing that it claimed to be then composed of more than 1,650,000 individual members. And on page 293, in the report of the defendant Gompers, as president of said Federation, he refers to the activity of "all our organizers, our organizations, and our members."

It is further insisted by counsel for defendants that plaintiff's business is not property or a property right; that it is a mere abstraction, incapable of judicial protection. . . .

Second. The second point to be considered is, does the testimony so connect the defendants, or any of them, with such combination and conspiracy as to make them amenable to the injunctive power of this court.

The record in this case leaves no doubt that plaintiff has been and still is the object of a "boycott," using that in the most obnoxious sense, viz., an unlawful conspiracy to destroy its business; such a conspiracy as has received the condemnation of every Federal and State Court in the country before which it has been brought for criminal action, legal redress, or equitable injunction. This conspiracy originated in the action, by Metal Polishers' Local No. 13 in St. Louis, in the Fall of 1906, a body federated with the defendant American Federation of Labor through the International Metal Polishers, etc., Union. It was advanced in accordance with the procedure of the said Federation until in March, 1907, it received the active endorsement of the Executive Council, and controlling body of said Federation. It is true that when this body acted it

did not use the word "boycott" but the more euphemistic terms of "Unfair" and "We Don't Patronize."

But an examination of the record convinces me that whatever the term used, the effect intended was what naturally happened, viz., a boycott. In fact, that the terms mean the same thing in the procedure of the Federation does not seem doubtful. Its constitution provides for a committee on boycotts to be appointed by the president at the annual convention; it was to such a committee on boycotts that the resolution of Bechtold was referred, and by that committee it was referred to the Executive Council. Over 15 pages of the printed affidavits are filed with reports of the "organizers" of the Federation from all parts of the country, published in the *Federationist*.

These almost invariably contain the statement that "all American Federation of Labor boycotts are being pushed as thoroughly as possible." In the convention of the Federation held in November, 1906, a motion to concur in the report of a certain committee was carried; this report is as follows:

"At the twenty-fifth annual convention of the American Federation of Labor, held in Pittsburg, attention was called to the large number of firms on the unfair list and the necessity of reducing the same so that we could make our declarations of unfairness effective.

"This committee finds that not many changes have occurred during the past year and believe that some action must be taken in order to secure the co-operation of the labor press. We can't expect the labor press to give the space it would require to publish the names of all these firms, and without publicity the intent of the boycott is defeated.

"We believe that some measure must be adopted to find out if the national, international, or local unions who are responsible for the boycotts are doing their duty to bring about the desired results. Therefore, we recommend that the organizations that have firms on the 'We Don't Patronize' list of the American Federation of Labor, beginning January 1, 1907, report every three months to the Executive Council of the American Federation of Labor what efforts they are making to render the boycott effective. Failure to report for six months shall be sufficient cause to remove such boycotts as are not reported on from the 'We Don't Patronize' list of the American Federation of Labor."

It will be noticed that here the terms "Unfair," "We Don't Patronize," and boycott are used interchangeably. In the affidavit of one of the defendants in this case, he speaks of the resolution introduced at the Minneapolis convention relative to a dispute "between one of the organizations affiliated with the American Federation of Labor" and plaintiff as follows: "This resolution sought the endorsement of the American Federation of Labor in the declaration of a boycott by that organization, the International Brotherhood of Foundry Employees."

It is well settled law that all who accede to a conspiracy after its formation and while it is in execution, and all who with a knowledge of the facts concur in the plans orginally formed and aid in executing them are fellow-conspirators.

They commit an offence when they become parties to the transaction or further the original plan. . . .

Upon the record as presented, and for the reasons stated, I am of the opinion that the plaintiff is entitled to be protected by an injunction until the final hearing of the case, and I will sign an order restraining the defendants substantially as prayed in the bill.

ORDER GRANTING INJUNCTION PENDENTE LITE.

This cause coming on to be heard upon the petition of the complainant for an injunction *pendente lite* as prayed in the bill, and the defendants' return to the rule to show cause issued upon the said petition, having been argued by the solicitors for the respective parties, and duly considered, it is thereupon by the court, this 18th day of December, A. D. 1907, ordered that the defendants, the American Federation of Labor, Samuel Gompers, Frank Morrison, John B. Lennon, James Duncan, John Mitchell, James O'Connell, Max Morris, Denis A. Hayes, Daniel J. Keefe, William D. Huber, Joseph F. Valentine, Rodney L. Thixton, Clinton O. Buckingham,

Herman C. Poppe, Arthur J. Williams, Samuel R. Cooper, and Edward L. Hickman, their and each of their agents, servants, attorneys, confederates, and any and all persons acting in aid of or in conjunction with them or any of them be, and they hereby are, restrained and enjoined until the final decree in said cause from conspiring, agreeing, or combining in any manner to restrain, obstruct, or destroy the business of the complainant, or to prevent the complainant from carrying on the same without interference from them or any of them, and from interfering in any manner with the sale of the product of the complainant's factory or business by defendants, or by any other person, firm, or corporation, and from declaring or threatening any boycott against the complainant, or its business, or the product of its factory, or against any person, firm, or corporation engaged in handling or selling the said product, and from abetting, aiding or assisting in any such boycott, and from printing, issuing, publishing, or distributing through the mails, or in any other manner any copies or copy of the *American Federationist*, or any other printed or written newspaper, magazine, circular, letter, or other document or instrument whatsoever, which shall contain or in any manner refer to the name of the complainant, its business, or its product in the "We Don't Patronize" or the "Unfair" list, of the defendants, or any of them, their agents, servants, attorneys, confederates, or other person or persons acting in aid of or in conjunction with them, or which contains any reference to the complainant, its business or product in connection with the term "Unfair," or with the "We Don't Patronize" list, or with any other phrase, word or words of similar import, and from publishing or otherwise circulating, whether in writing or orally, any statement, or notice, of any kind or character whatsoever, calling attention of the complainant's customers, or of dealers or tradesmen, or the public, to any boycott against the complainant, its business or its product, or that the same are, or were, or have been declared to be "Unfair," or that it should not be purchased or dealt in or handled by any dealer, tradesman, or other person whomsoever, or by the public, or any representation or statement of like effect or import, for the purpose of, or tending to, any injury to or interference with the complainant's business, or with the free and unrestricted sale of its product, or of coercing or inducing any dealer, person, firm, or corporation, or the public, not to purchase, use, buy, trade in, deal in, or have in possession stoves, ranges, heating apparatus, or other product of the complainant, and from threatening or intimidating any person or persons whomsoever from buying, selling, or otherwise dealing in the complainant's product, either directly, or through orders, directions, or suggestions to committees, associations, officers, agents, or others, for the performance of any such acts or threats as hereinabove specified, and from in any manner whatsoever impeding, obstructing, interfering with, or restraining the complainant's business, trade, or commerce, whether in the State of Missouri, or in other States and Territories of the United States, or elsewhere wheresoever, and from soliciting, directing, aiding, assisting, or abetting any person or persons, company, or corporation to do or cause to be done any of the acts or things aforesaid.

And it is further ordered by the court that this order shall be in full force, obligatory and binding upon the said defendants and each of them, and their said officers, members, agents, servants, attorneys, confederates, and all persons acting in aid of or in conjunction with them, upon the service of a copy thereof upon them or their solicitors or solicitor of record in this cause; *Provided*, The complainant shall first execute and file in this cause, with a surety or sureties to be approved by the court or one of the justices thereof, an undertaking to make good to the defendants all damage by them suffered or sustained by reason of wrongfully and inequitably suing out this injunction, and stipulating that the damages may be ascertained in such manner as the justice of this court shall direct, and that, on dissolving the injunction, he may give judgment thereon against the principal and sureties for said damages in the decree itself dissolving the injunction.

(Signed) ASHLEY M. GOULD,
Justice.

THE INDUSTRIAL WORLD.

New Federal Employers' Liability Law.

On April 23, President Roosevelt signed the employers' liability bill recently passed by Congress. The bill makes railroads or other common carriers, while engaged in interstate commerce, liable for the injury or death of an employee if the injury or death results, in whole or in part, from the negligence of any of the officers, agents, or employees of such carriers, or by reason of any defect or insufficiency in equipment. This provision is made applicable also to carriers in the Territories, the District of Columbia, the Panama Canal Zone, and other posses-

sions of the United States. It is provided that in any action brought under the provisions of the bill the injured employee shall not be held to have assumed the risk of his employment in any case where the violation by the carrier of any statute for the safety of employees contributed to the injury or death of the employee. Any contract, rule, regulation, or device to enable the carrier to exempt itself from liability under the act is rendered void by a specific declaration to that end. Provision is made, however, that the carrier shall receive credit for any contribution made to the employee or his family in the form of insurance, relief, benefit, or indemnity. An action for the recovery of damages must be commenced within two years from the date of the cause of the suit.

The President, before signing the bill, submitted it to the Attorney-General for an opinion upon its constitutionality. The Attorney-General in his opinion indicated that the bill was confined in its scope to "common carriers by railroads" as distinguished from the act declared unconstitutional by the Supreme Court, which embraced "all common carriers engaged in interstate commerce and foreign commerce." The Attorney-General then showed through court decisions and constitutional interpretations that this restriction does not make the act repugnant to the Constitution, but is in line with State statutes which have been upheld in the highest tribunals.

Nine-hour Law for Railroad Telegraphers.

The nine-hour law for train despatchers and operators, passed by the Fifty-ninth Congress, went into effect throughout the United States on March 4 and gave employment to several thousand operators, many of whom had been idle since the disastrous strike of last Summer. This law provides that in offices, towers, stations, and other places where operators are concerned in the movement of trains, no operators shall be permitted to work more than nine hours in 24 if the station is open continuously, nor more than 13 hours out of the 24 if the office is operated only during the daytime.

The law also prescribes that no member of a train crew shall be required or permitted to work longer than 16 hours at a stretch.

Federal Arbitration.

The following decision, probably the first of its kind, was rendered by Martin C. Knapp, Chairman of the Interstate Commerce Commission, and Charles P. Neill, United States Commissioner of Labor, acting as mediators in a controversy between the Southern Railway and its employees:

"The undersigned mediators who have endeavored to settle the pending controversy between the Southern Railway and allied companies and their contract labor, have found the employees unwilling at this time to accept a reduction of wages, because, in the opinion of these employees, the present depression in business has not continued for a sufficient period to justify a reduction.

"Under all the circumstances of the case, irrespective of its merits, we are of the opinion that the interests of the public will be promoted, as well as the interests of all parties to the controversy, if the companies shall not insist upon the proposed reduction at this time. Accordingly, we have recommended to the companies to continue the present schedule of wages until July 1 next, upon the understanding that if, by that time, business conditions have not substantially improved, the matters in dispute will be taken up again by the mediators with the view of reaching such an agreed adjustment of the wage scale as may seem to be just under the conditions then existing.

"We take great pleasure in announcing that this recommendation has been accepted by the companies and by their employees in the operating, mechanical, and roadway departments represented by their organizations."

Reduction in Wages in the Cotton Industry.

Following a period of curtailment of production by the cotton mills of Massachusetts for several weeks, the manufacturers decided that a reduction in wages as well as a reduction in hours was absolutely necessary for meeting present business conditions. Manufacturers claim that a wage reduction would drive out of the country the undesirable employees who were taken on during the period when labor was so scarce, and give employment only to the best class of expert help. Cotton mills in Lowell, New Bedford, Lawrence, Barre, Sutton, Winchendon, Fitchburg, Sturbridge, Amesbury, Adams, Attleborough, Methuen, Salem, Holyoke, Waltham, and Chicopee have reduced wages, in most cases averaging 10 per cent.

On March 12, the cotton mills of Lowell posted notices announcing a 10 per cent reduction in wages to take effect March 30. The Textile Council met on March 17 to consider this action of the manufacturers, and after considerable discussion decided to protest to the mill agents against the proposed reduction in wages. In accordance with this action by the Council, the secretary forwarded the following letter to the Lowell Manufacturers' Association:

To Members of Lowell Manufacturers Association, William S. Southworth, *Secretary*.

Gentlemen: At a meeting of the Lowell Textile Council held Tuesday evening, March 17, the proposed reduction of 10 per cent in wages in cotton mills of our city came up for action, and after full discussion of the question I was instructed to notify you that the Council protests against the reduction of 10 per cent in wages, which goes into effect March 30, as not the proper remedy for the present depression in the cotton industry. That a curtailment of production is at all times preferable to a reduction in wages, which reduces the purchasing power of the wage-earner.

I am also instructed to call to the attention of members of your Association that up to the time of the stringency in the money market caused by the panic which followed the closing of the doors of the Knickerbocker Trust Company, of New York, the cotton industry was passing through a period of unexampled prosperity, which is amply proved by the vast earnings made by the cotton mills in New England during the last two years or more.

That the cotton textile workers of this city co-operated to their fullest extent with the manufacturers by giving them the best possible service, in some departments running their machines as much as 70 hours in a week. And, furthermore, the wages have already been reduced in some departments of some of the mills, and in one mill in particular the reduction averages a good deal more than the present proposed reduction.

(Signed)

On behalf of the Lowell Textile Council, Joseph F. Ashton, *Secretary*.

The mill agents, on March 23, replied as follows to the protest of the Textile Council:

Lowell, Mass., March 23, 1908.

To the Lowell Textile Council:

Gentlemen: Your letter of the 18th inst., by your secretary, Mr. Ashton, was received after its publication in the papers. I am directed by our association to reply as follows to the points you make:

First, as to your protest against a reduction of wages, this is natural, and we can say only that we greatly regret being obliged to make the change.

Second, to your expression of opinion that curtailment of products is to be preferred, we reply that from the point of view of the mill management the contrary is the case.

Third, as to our alleged recent "vast earnings," we have — some of us — made for a short time unusual profits, part of which have been paid to you, and a very little extra to stockholders; and some concerns have strengthened themselves against foreseen adversity by adding to their quick capital. From the latter course you and all employees benefit; though you may not appreciate this, the fact is demonstrable.

Lastly, you allege a recent reduction of wages "in one mill in particular." You are advised that our association refuses responsibility for such action by any mem-

ber if the reduction is below the level of the general scale.

(Signed)

FOR THE LOWELL MANUFACTURERS ASSOCIATION, W. S. SOUTHWORTH, *Secretary.*

On March 23, a reduction of wages in the New Bedford mills was announced, when notices were posted by every corporation in the city to the effect that a cut of about 10 per cent would become operative after April 6. About 22,000 operatives were affected. 16,000 in the cloth mills and 6,000 in the yarn mills.

The Textile Council met on March 24 to consider the order of the cotton manufacturers to reduce the wages on April 6. It was voted to ask for a conference with representatives of the mill owners. The Textile Council, which represents the union operatives, expressed its disapproval of the proposed reduction in view of the long period of curtailment during which the incomes of the wage-earners have been reduced, and because the operatives were not given the three weeks' notice of a change in the wage schedules they had been led to expect in the past.

A conference was held between a committee of the Cotton Manufacturers Association of New Bedford and the Textile Council on March 31. The association agreed to postpone the reduction for one week in view of a previous agreement that in case of wage reductions the operatives should be given three weeks' notice. The manufacturers refused to make any further concession.

The following statement was given out by the Textile Council as the argument used by the members to the manufacturers:

The real cause for asking for the conference on the proposed cutdown of about 10 per cent in the mills of our city is as follows: First, that we think the time has not yet arrived when the New Bedford manufacturers should cut down the wages of the operatives; second, that the plan of curtailment has not had a fair trial up to now in our class of work; third, that the immense profits through the past three years of prosperity should enable our manufacturers to run at least three months more at the present rate of wages without any serious trouble as to the shrinkage of fair dividends; fourth, that at the end of that time we can better judge the policy of those people who are continually clamoring for wage reductions.

Wage reductions in the face of the great amount of money accumulated by the manufacturers the past three years are unfair to the operatives, and our manufacturers should pause and consider the injury they will bring on the industry; that they will subject a large number of the operatives to a less than living wage. The curtailment through which the operatives of New Bedford have gone up to now will be as nothing to the feeling that now prevails at the dread of a cut in the already small wages of the people, and should you be determined to cut rather than curtail still further, the blame must rest where it belongs.

There is no doubt you, the manufacturers, will tell us of the competition you have to meet; that men who make the same goods as you do and sell in the same markets have cut down, and that you have no alternative but to follow in their wake; you will probably tell us of the large wages that the operatives have been receiving, that they are larger than they ever have been in the history of New Bedford; but we can also add that we work harder and are better skilled than any operatives in the United States.

Later the Spinners, Carders, Weavers and Loomfixers Unions voted to accept the reduction in wages.

Lynn Building Trades Dispute.

A decision of great import to labor organizations, rendered by the Supreme Judicial Court of Massachusetts in the case of Reynolds v. Davis, on April 2, ordered amended the very broad injunction restraining the officers and members of the Building Trades Council, of Lynn, and its affiliated unions, from interfering with the business of the employers engaged in the building trades of that city. The original dispute had its inception in January, 1906, when Carpenters Union No. 595 presented the

master carpenters with a request for a uniform wage of 41 cents an hour, to take effect May 1, 1906, instead of a sliding scale of $2.75 to $3 a day which the employers desired to continue. This action of the Carpenters Union was hastened by a complaint received by the union from the Carpenters District Council of Boston, stating that members of the Lynn Union were working in Chelsea for less than 41 cents an hour, the minimum wage prescribed in the territory under the jurisdiction of the Boston Council.

The Lynn Union thereupon instructed its members to observe the prevailing price in the territory in which they were at work. The request of the Carpenters Union was endorsed by the Building Trades Council, and during the next few months nearly every union affiliated with the Building Trades Council, namely the unions of bricklayers and plasterers, plumbers, lathers, painters, and building laborers, made requests for increases in wages. The Master Builders Association was reorganized and held several meetings at which the requests made by labor organizations were given consideration. The Association was disposed to grant the requests for increased wages, but opposed granting the carpenters a flat rate of 41 cents an hour. The Carpenters Union insisted upon its demands, and no settlement was reached. On May 1, some 60 employers posted open shop notices in their several shops, whereupon about 180 union carpenters left work. On June 1, upon the termination of their agreements, about 100 masons, plasterers, and plumbers went out in sympathy.

In May, a bill was brought by Edward T. Reynolds and other members of the Master Builders Association against Carpenters Union No. 595 and other building trades unions, and the officers, agents, and members thereof, seeking to enjoin them from interfering with the business of the complainants, alleging that members of the unions named had conspired to injure the business of the employers, had left work in consequence of orders of the union, and had intimidated and threatened the workmen of the complainants. The respondents filed an answer denying any conspiracy, threats, or attempts at intimidation, but admitting that some of them had acted as pickets near the places of business of the complainants. The case was referred to a master and on his report, which was confirmed by the Court, July 23, 1906, a final decree was entered by the Court, December 10, 1906, restraining the respondents from interfering with the complainants' business by obstructing, annoying, intimidating, or interfering with any persons having business with the complainants or seeking to enter into contracts or other business relations with them. The decree restrained respondents from threatening to cause a strike among the employees of persons having business relations with the complainants. The case then went to the Supreme Court on an appeal and the decision of the Superior Court was affirmed.

The Court held the strike unlawful and unjustifiable because of one of the rules of the Building Trades Council which provided that grievances of an employee against his employer should be taken up by the executive board of the Council, and if the employer should refuse to comply with the decision of the board he was to be reported as "unfair," and a continued refusal would result in the removal of all union men from his employ. A strike to enforce this rule was declared by the Court to be an illegal combination, to stop which an injunction should be granted.[1]

Chief Justice Knowlton dissented from the opinion of the other justices, holding that the labor union has the right to frame its own rules and regulations for organization, that he finds nothing in those of the carpenters that

[1] The opinion of the Court delivered by Justice Loring is given in full on pages 206-210 of this Bulletin.

he would not expect to find in any well organized labor union, and that without investigation it would be impossible for any labor union to get at the facts.

The majority opinion held that the names of the Building Trades Council and local unions should be stricken from the title of the case as they were not properly joined, being unincorporated associations; that the master failed to deal with the real question involved in the case and that therefore his reported facts had no bearing on the case. The action of the lower Court was sustained and the bill ordered amended.

It was reported that Carpenters Union No. 595 would appeal from this decision to the Supreme Court of the United States.

W. L. Douglas Shoe Co.'s Union Contract.

The State Board of Conciliation and Arbitration made an award in the controversy between the W. L. Douglas Shoe Co. and its employees. The arbitration contract between employer and employees provided that "in case of failure" between the two parties "to mutually adjust any dispute or grievance" a joint application should be made to the State Board for a decision on the matters in dispute.

An amending provision of the contract, agreed to on October 26, 1905, provided as follows:

> It is agreed that Section 11 of the within contract shall be construed to mean that the employer has a right, at any time, to change its system or to introduce new methods in the manufacture of its product, but, in such cases, notice of the change is to be given at once to the local union, or unions, affected, and the price, when made, either by mutual agreement, or by arbitration, shall date from the time of making the change. There shall be no interruption of work on account of, or interference with, such changes while prices are being fixed.

The State Board's decision follows:

The employer transferred the manufacture of a certain grade of shoe from Factory 1 to Factory 2, where lower grades are made, and claims such transfer "is a change of system and method within the meaning of their arbitration contract as only No. 2 grade work will be required." The employees contend that the transfer of work as made by the employer "is not a change of system or method within the meaning of the arbitration contract."

The question of temporary prices to be paid for the labor performed on the product so transferred is not before the Board for adjudication. It is included in Section 11, as amended, in the following words: "Pending a decision, wages shall be paid on account, at the rate which the parties hereto agree upon to be just."

The parties submit to the Board the following question: "Is the W. L. Douglas Shoe Company within its rights, as defined in Section 11 of their contract as amended, in transferring No. 1 product to No. 2 factory without paying the No. 1 price, until the same is settled mutually or by arbitration?"

Having considered said application and heard said parties by their duly authorized representatives, the Board decides that the W. L. Douglas Shoe Company is within its rights, as defined in Section 11 of its contract as amended, in transferring the manufacture of what was formerly No. 1 product to the No. 2 Factory without paying the No. 1 price, until the same is settled mutually or by arbitration.

The Boot and Shoe Workers Union has decided that the union stamp contract can not be continued under such conditions, as it would allow any firm to reduce wages at any time by transferring the work from factories where high prices are paid to factories where the prices are lower. On April 1, a communication from General President Tobin, of the Boot and Shoe Workers Union, was received by the Joint Shoe Council of Brockton, urging that it was a most important duty of all local unions concerned to present at once to the W. L. Douglas Shoe Co. price lists covering the 25 cases of $3.50 shoes transferred by the company to its No. 2 Factory to pay No. 2 prices instead of the No. 1 lists.

General President Tobin notified the W. L. Douglas Shoe Co. of a desire to terminate the present stamp contract November 1 next, the date of expiration, thus leaving it to the Douglas Co. to open further negotiations. The local unions have been notified to let the matter drop for the present. President Tobin states that in view of the State Board's decision under the present contract there would be nothing to prevent the company from opening a No. 3 factory and making its No. 2 shoes there. When prices for shoes are made the unions intend that there shall be a complete understanding as to conditions.

Fall River Weavers and Slasher Tenders Secede from the U. T. W. A.

The Weavers Union of Fall River, on April 1, after a session of two hours, voted to withdraw from the United Textile Workers of America, because of an increased per capita tax.

The meeting had been called especially to act upon a recommendation from a special committee that had been appointed to look into the matter of increase in the per capita tax of the United Textile Workers of America. The resolve of the committee as presented to the special meeting, held on April 1, was as follows: "That the National Federation of Weavers recommend to its attached locals to send a full delegation to the next convention of the United Textile Workers to have the sense of a resolution adopted that the members of the Weavers Union think the best interests of the textile workers can be best served by being organized in national craft unions." This recommendation was adopted, and then a motion that the union withdraw from the United Textile Workers of America was made and carried.

The union has a membership of about 3,000, and there were about 150 members present at the meeting held on April 1. These 150 members represented a sentiment of a much larger number in the decision that was taken, for in many cases there is a head of a family who will cast a vote representing the sentiment of three, four, and sometimes five other members of the family, also members of the union, but not present and voting.

One week later the Slasher Tenders Union voted to withdraw from the United Textile Workers, and on April 14 the Weavers Union, of New Bedford, voted not to pay the increased per capita tax and to write President Golden of the United Textile Workers to attend the next meeting of the union and present the national organization's side of the case.

Recent Labor Disputes.

Boston. On March 30, about 75 union capmakers struck for improved working conditions.

Boston. On April 1, about 150 granite cutters employed in 12 shops in Boston struck for an increase in wages to 42 cents an hour. The principal trouble in making a settlement was the question as to whether the agreement should run for one or three years, the employers asking for a three-year agreement and the union for a one-year agreement.

Boston. On April 1, several teamsters employed by a local company struck against a reduction in wages of $1 a week.

Chicopee. On April 20, about 20 cotton spinners struck against a 10 per cent reduction in wages. Three days later nearly all returned to work.

Clinton. On April 1, about 35 carpenters struck for an increase in wages from $3 to $3.28 a day. A few days later the increase was granted by the master carpenters.

Fall River. On April 1, several union roofers struck for an increase in daily wages from $2.50 to $3.

Lenox. On April 1, the union painters struck for an increase in wages to $3.25 a day.

Lowell. On March 31, about 38 beamers and drawing-in girls struck

against a 10 per cent reduction in wages. All returned to work the following day, having been convinced of the futility of maintaining a strike.

Lowell. On April 5, the Brussels Weavers Union voted unanimously to continue the strike at the Bigelow Carpet Co.'s mills indefinitely.

Lynn. On April 14, 13 ironers employed in a local shoe factory struck on account of a disagreement with the firm over prices on certain classes of work.

Milford. On April 1, about 300 steam engineers, derrickmen, and quarrymen struck owing to the failure of the three unions to obtain certain concessions from the granite manufacturers. The engineers asked for the Saturday half-holiday during the entire year instead of during the summer months only, a renewal of the wage scale of $16 for a 45-hour week, and time and one-half for overtime. The manufacturers offered $14 to $16 a week of 48 hours and regular rates for overtime. The quarrymen and derrickmen asked for an increase from 27 cents to 30 cents an hour for 45 hours a week. The manufacturers would only grant 27 cents an hour for 48 hours a week. One hundred and thirty granite cutters were thrown out of work. One of the companies involved offered employment to 50 of its cutters at its works in Worcester, but the union refused to accept the offer and voted to remain out until a settlement was made with the engineers.

New Bedford. On April 13, the carders in the employ of one of the cotton mills struck against a reduction in wages.

Quincy. On April 1, about 108 engineers employed at the granite quarries struck, owing to the failure of the engineers and the manufacturers to agree upon a new wage scale. The engineers asked for an increase in wages from $16 to $20 a week, Saturday half-holiday for three months, and a fireman for every boiler of 150 horsepower or over. Nearly every quarry was affected, and work was practically at a standstill. About 300 polishers were thrown out of work, being unable to work when the power was shut off.

The Granite Cutters Union and the Granite Manufacturers Association agreed upon a new price list, and, with the exception of four points, settled the questions at issue. It was agreed that the four disputed points should be submitted to the National Board of Conciliation, composed of representatives of the National Granite Industries of the United States and the International Granite Cutters Union.

The committee heard the points in dispute and decided in favor of the cutters. But the Granite Manufacturers Association objected to abiding by this decision. The claim was made that one member, who represented the manufacturers, was not a member of the executive committee of the National Granite Industries nor of the association, and that he acted for another member of the International Granite Cutters Union, and that consequently the action of the board was null and void.

To this objection the Granite Cutters Union of Quincy asserted that the report of the board of arbitration was signed by every member and that even though one member of the board could not sit legally it would not invalidate the action of the other five members.

The failure of the association and the cutters' union to arrive at a settlement did not result in a suspension of work in the stone cutting yards because the cutters agreed to continue at work pending a settlement of the disputed points by the joint council, and they kept their word. Owing to strikes in other branches of the trade, however, many stonecutters were laid off, and as it was a month before the joint council reported. The cutters out of work were the worst off of any branch of the trade because they could not draw strike money, there being no strike in their branch on account of their agreement to continue at work pending a settlement of the four points in dispute.

The polishers settled their bill and returned to work the last week in March, but the engineers are still out on strike and the quarrymen are unable to work, as their old bill expired March 1 and no new bill had been agreed upon. The quarrymen asked for an increase of from 26 to 30 cents an hour, but offered to compromise at 28. This was accepted by the manufacturers providing the national association would back up the Quincy association, but the national association refused to do so and left the Quincy manufacturers willing to pay the 28 cents but not allowed to do so by the national organization. The work of the quarrymen here is much more hazardous than in other granite centers.

On April 21, the quarrymen and the manufacturers signed an agreement by which the quarrymen will receive 26 cents an hour for the first year and 28 cents for the following two years. In all other respects the new agreement is the same as that which expired February 29.

Rockport. The strike of engineers at the granite quarries, which has been on for eight weeks, was settled on April 21, and the men returned to work the following day. An agreement for three years was signed, giving many of the men a substantial increase in wages. A minimum wage and the eight-hour day were established for the first time. All of the old men will be reinstated.

Springfield. On April 2, about 300 painters struck for the Saturday half-holiday with pay during the entire year. The Painters Union voted to accept the services of the State Board of Conciliation and Arbitration, but the Master Painters Association refused, stating that there was nothing to arbitrate.

No strikes of any importance took place in Massachusetts on the first of May, although many trade unions have requested the employers for increases in wages and reductions in hours of labor, as well as for renewals of wage schedules which expired on May 1.

New Unions Organized.

Boston. A new organization to be known as the Ready-made Tailors Union of the United Brotherhood of Tailors was formed on March 31 at 164 Canal St.

Boston. On April 19, the Council of Federated Trades of the New York, New Haven and Hartford R.R. was organized. The trades represented in the Council are blacksmiths, boilermakers, car workers and carmen, steamfitters, machinists, car and locomotive painters, upholsterers, and metal workers.

Boston. The Massachusetts State council of Wood, Wire, and Metal Lathers was formed April 26, delegates being present from all the local lathers' unions in the State.

Brockton. A committee, appointed by the lasters who were formerly members of Local No. 100, of the Boot and Shoe Workers Union, the charter of which was recently revoked, made application for a new charter.

Haverhill. About 20 former members of Barbers Union No. 391 organized an independent union on April 1. It was voted to hold meetings every two weeks and impose dues of 25 cents a month upon each member. The members of the new organization were dissatisfied with a decision recently rendered by the General President of the Journeymen Barbers International Union of America, declaring the election held on December 5 illegal. Action was taken by Local No. 391 regarding the 21 suspended members, by allowing them one week in which to pay the fines which had been imposed upon them for non-payment of dues. On May 6, the members who had seceeded from the Local No. 391 were reinstated.

Lynn. A local union of stationary engineers in Lynn received a charter from the International Union of Steam Enginemen on March 31. About 90 per cent of that craft in Lynn were reported to have joined the organization.

Lynn. A new union of waiters, waitresses, etc., was organized on April 1.

Worcester. A union of newsboys was organized during the latter part of March to be affiliated with the American Federation of Labor.

Unions Favor State Ownership.

It is of some public interest to note that organized labor has asserted itself in favor of State ownership of railroads. The Boston Central Labor Union, at its meeting on April 5, adopted definite declarations relative to the eventual disposition of the Boston & Albany and the Boston & Maine Railroads. Resolutions were approved which were ordered sent to all the members of the Legislature and to all the labor unions in the State. It was resolved that the lease of the Boston & Albany Railroad to the New York Central and Hudson River Railroad be canceled, the charter of the former revoked and the road taken by the Commonwealth; and that the State buy the Boston & Maine R.R. stock now held by the New York, New Haven & Hartford R.R. interests and keep it for the future protection of industrial and business interests. In connection with the Boston & Albany resolutions it was reported that the Massachusetts State Branch of the American Federation of Labor had unanimously declared in favor of canceling the Boston & Albany lease and the purchase and operation of the railroad by the State.

ANNUAL REPORTS OF THE BUREAU OF STATISTICS OF LABOR.

The following issues of the annual reports of this Department remain in print, and will be forwarded when requested upon receipt of 25 cents for each cloth bound copy or 5 cents for each part.

1893. This report contains a special report on Unemployment, and Labor Chronology for the year 1893.

1896. Contains, I. Social and Industrial Changes in the County of Barnstable; II. Graded Weekly Wages, 1810-1891, second part; III. Labor Chronology for 1896.

1897. Contains, I. Comparative Wages and Prices, 1860-1897; II. Graded Weekly Wages, 1810-1891, third part; III. Labor Chronology for 1897.

1898. Contains, I. Sunday Labor; II. Graded Weekly Wages, 1810-1891, fourth part; III. Labor Chronology for 1898.

1899. Contains, I. Changes in Conducting Retail Trade in Boston since 1874; II. Labor Chronology for 1899.

1900. Contains, I. Population of Massachusetts in 1900; II. The Insurance of Workingmen; III. Graded Prices, 1816-1891.

1903. Contains, I. Race in Industry; II. Free Employment Offices in the United States and Foreign Countries; III. Social and Industrial Condition of the Negro in Massachusetts; IV. Labor and Industrial Chronology for 1903.

1905. Contains, I. Industrial Education of Working Girls; II. Cotton Manufactures in Massachusetts and the Southern States; III. Old-age Pensions; IV. Industrial Opportunities not yet Utilized in Massachusetts; V. Statistics of Manufactures: 1903-1904; VI. Labor and Industrial Chronology.

1906. Contains, I. The Apprenticeship System; II. Trained and Supplemental Employees for Domestic Service; III. The Incorporation of Trade Unions; IV. Statistics of Manufactures: 1904-1905; V. Labor Laws of Massachusetts; VI. Labor and Industrial Chronology.

1907. Part I. Strikes and Lockouts in Massachusetts, 1906; Part II. Recent British Legislation; Part III. Industrial Opportunities not yet Utilized in Massachusetts [second report]; Part IV. Annual Statistics of Manufactures — Comparisons for 1905 and 1906; Part V. First Annual Report of the State Free Employment Offices. (Parts VI and VII in preparation.)

ANNUAL REPORTS ON THE STATISTICS OF MANUFACTURES.

Publication begun in 1886, but all volumes previous to 1893 (and 1901) are now out of print. Each volume contains comparisons, for identical establishments, between two or more years as to Capital Devoted to Production, Goods Made and Work Done, Stock and Materials Used, Persons Employed, Wages Paid, Time in Operation, and Proportion of Business Done. Beginning with the year 1904, the Annual Report on the Statistics of Manufactures was discontinued as a separate volume and now forms a part of the Report on Labor.

The volumes remaining in print are given below, the figures in parentheses indicating the amount of postage:

1893 (15 c.); **1894** (15 c.); **1895** (15 c.); **1896** (10 c.); **1897** (10 c.); **1898** (15 c.), contains also a historical report on the Textile Industries; **1899** (10 c.); **1900** (10 c.); **1902** (10 c.); **1903** (10 c.).

SPECIAL REPORTS.

A Manual of Distributive Co-operation — 1885 (postage 5 c.).

Reports of the Annual Convention of the National Association of Officials of Bureaus of Labor Statistics in America — 1902, 1903 1904, 1905, 1906, and 1907 (postage 5 cents each).

LABOR BULLETINS.

These Bulletins contain a large variety of interesting and pertinent matter on the Social and Industrial Condition of the Workingman, together with leading articles on the Condition of Employment, Earnings, etc. The following numbers now remaining in print will be forwarded upon receipt of five cents each to cover the cost of postage.

No. 46, February, 1907. Unemployment in Massachusetts — State Free Employment Office — Insurance against Unemployment in Foreign Countries — The Metropolitan District — Population: Boston and Massachusetts — Labor Legislation: United States and Canada, 1906 — Industrial Agreements — Excerpts — Statistical Abstracts — Industrial Information.

No. 50, June, 1907. Manufactures: Massachusetts and Other States, No. 3, Comparison by States — Changes in Rates of Wages and Hours of Labor in Massachusetts, 1906 — Free Employment Offices — Estimated Population of Massachusetts Cities, 1906-1910 — Trade Unions in Foreign Countries — Quarterly Record of Strikes and Lockouts — Trade Union Notes — Industrial Agreements — Recent Court Decisions Relating to Labor — Excerpts — Statistical Abstracts — Industrial Information — Index to Bulletins Nos. 45 to 50.

No. 51, July-August, 1907. The Place of Birth of the Inhabitants of Massachusetts — The Place of Birth of the Inhabitants of the City of Boston — Massachusetts Forestry — The Deaf, by Herbert B. Lang, M.D. — Wage Agreements in Fall River Cotton Mills — Labor Legislation in Massachusetts, 1907 — Help Wanted in New England's Cotton Mills — Free Employment Offices in Foreign Countries — Municipal Pawnshops in France and Germany — Employees' Mutual Benefit Associations in Massachusetts, 1906 — Movement of Manufacturing Establishments in Massachusetts, 1906 — Factory Construction in Massachusetts, 1906 — Failures in Massachusetts, 1906 — Trade Union Notes — Industrial Agreements — Recent Court Decisions Relating to Labor — Excerpts — Statistical Abstracts — Industrial Information.

No. 53, October, 1907. Editorial Review — Acute Diseases — Workmen's Compensation Acts — The Industrial World.

No. 54, November, 1907. Editorial Review — Chronic Diseases — Shipbuilding in Massachusetts — Recent Court Decisions Affecting Labor — Massachusetts Monthly Statistical Reports — The Industrial World.

No. 55, December, 1907. Editorial Review — The Malmed, Lame, and Deformed — The President on Labor Matters — Massachusetts Average Retail Prices, October, 1907 — The Need of Industrial Education in the Textile Industry — Massachusetts Monthly Statistical Reports — The Oilcloth and Linoleum Industry in Massachusetts — Recent Foreign Labor Legislation — Recent Court Decisions Affecting Labor — The Industrial World — Index to Volume XII (Bulletins Nos. 51 to 55).

No. 56, January, 1908. Editorial Review — Conciliation in British Trade Disputes — The Immigrant Population of Massachusetts — Employers' Associations — Extracts from the Constitution of the State of Oklahoma — Recent Court Decisions Affecting Labor — The Industrial World — Massachusetts Monthly Statistical Reports.

No. 57, February, 1908. The Unemployment Situation in Massachusetts — Recent Cases under the Canadian Industrial Disputes Investigation Act — The Industrial World.

No. 58, March-April, 1908. Labor Legislation in the United States, 1907 — Massachusetts Labor Legislation, 1907 — Legal Hours of Labor in the United States — Comparative Surveys of Labor Legislation.

No. 59, May, 1908. The State of Employment in the Organized Industries, April 1, 1908 — Recent Court Decisions Affecting Labor: Federal Employers' Liability Law, Oregon Ten-hour Law for Women, Hatters' Boycott Case, Anti-union Discrimination Law, Lynn Building Trades Dispute, American Federation of Labor Boycott Case — The Industrial World.

REPORTS BY MAIL.

Persons desiring the publications of this Bureau may receive them, as issued, if they will kindly, in accordance with our regulations, forward postage to the value of one dollar to cover cost of mailing. Due notice will be sent when this amount has been used so that the postage-deposit may be renewed if desired.

APPROVED BY THE STATE BOARD OF PUBLICATION.